FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2014

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS

ANDER CRENSHAW, Florida, *Chairman*

JO BONNER, Alabama
MARIO DIAZ-BALART, Florida
TOM GRAVES, Georgia
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MIKE QUIGLEY, Illinois
MARCY KAPTUR, Ohio
ED PASTOR, Arizona

NOTE: Under Committee Rules, Mr. Rogers, as Chairman of the Full Committee, and Mrs. Lowey, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

JOHN MARTENS, WINNIE CHANG, KELLY HITCHCOCK,
ARIANA SARAR, and AMY CUSHING,
Subcommittee Staff

PART 5

Printed for the use of the Committee on Appropriations

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PART 5

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2014

THURSDAY, MARCH 14, 2013.

SUPREME COURT

WITNESSES

HON. ANTHONY KENNEDY, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES
HON. STEPHEN BREYER, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES
JEFFREY MINEAR, COUNSELOR TO THE CHIEF JUSTICE
PAMELA TALKIN, MARSHAL OF THE COURT
KATHY ARBERG, PUBLIC INFORMATION OFFICER
GARY KEMP, DEPUTY CLERK
KEVIN CLINE, BUDGET MANAGER

Mr. CRENSHAW. The meeting will come to order. Good morning to Justice Kennedy and Justice Breyer. We thank you for being here today. You have both testified before this committee before, and you are back. I always wonder how you decide who comes before the subcommittee, whether you volunteer, whether someone volunteers for you.

Justice KENNEDY. It is based on merit.

Mr. CRENSHAW. Based on merit. That sounds great. But whatever the reason is, we are glad you are here. We appreciate your willingness, and we always look forward to hearing from the Court. This is one of those rare occasions where we have two branches of government get together in the same room and talk. I think we all know that an independent judiciary that has the respect of the citizens is something that is very important to our country. The fact that you decide these controversial questions is something that our Founding Fathers thought was really important. And while your budget is not as big as some of the other Federal agencies, you have one of the most important roles to play, and we appreciate that. Outside of the confirmation process, this is probably one of the few times that the two branches of government get together and interact. In my opinion, it is one of the most important things we can do, and recognize and respect each other.

I think you all know that the Federal Government is continuing to operate in an environment of scarce resources. I want to thank you all for the efforts that you have made to be more efficient, to contain costs as best you can. The overall budget request this year I understand is $86.5 million. That is $3 million over the current CR level, but I notice that you have implemented almost $2.2 million of savings. And that is important. Most of the increases that

I see in your budget is going to fund restoration activities in the building's north and south facade.

So we look forward to hearing your testimony this morning. We look forward to hearing you talk about the resources that you need to carry out your constitutional responsibilities. We would welcome any thoughts you have about the court system in general. And we want to work to make sure that the Court has the resources it needs. So we appreciate your efforts, again, to contain costs in these difficult times.

And so now before I ask for your testimony, I would like to ask my ranking member, Mr. Serrano, for any comments that he might have.

Mr. SERRANO. Thank you so much. And good morning. I have had the privilege of having you before the subcommittee both as chairman of the committee, now as ranking member. And we didn't get to have you before us last year, so I didn't get to ask you the question that is always on my mind, which is whether someone born in Puerto Rico can serve as President of the United States. And I realize, not being a lawyer, that I probably first have to get elected so it can become an issue, and I was trying to avoid that issue. So the question is out there, if you wish during your testimony to render an opinion. I think it will be historic. And I think I got one last time, but I am not going to ask again.

Thank you, Mr. Chairman. I would also like to warmly welcome you both back. As I have said in past years, this is one of the rare opportunities for our two branches to interact. Because of this, our questions sometimes range beyond strict appropriations issues affecting only the Supreme Court. As our Nation's highest court, many of us look to you for important insights into issues affecting the Federal Judiciary as a whole. That is certainly the case today. As a result of sequestration, the Federal Judiciary must implement significant budget cuts that will affect all aspects of our system of justice.

Chairman Crenshaw and I recently received letters from the Administrative Office of the U.S. Courts that detail the impact of sequestration on the Federal Judiciary. To say the least, the impact is severe. Many Federal courts will be unable to operate at the same level of efficiency, and many employees may be furloughed or laid off. There will be less supervision and programming for criminal offenders, the very things that help us prevent people coming back into prison. And our court security will be lessened, even as our Federal courts continue to deal with trials that pose significant security issues.

I am particularly worried about our Federal Defender program, where layoffs have occurred prior to sequestration, and show no signs of abating at this point. Additional funding reductions caused by the sequester will undoubtedly force further difficult choices, and undermine the ability of our Federal public defenders to do their utmost to help their clients.

There are many concerns that we have, and these are some of the questions that we will be asking today. So we welcome you back. And it is, Chairman Crenshaw, a unique situation. This is one of those hearings that I always look forward to. And as you can

see by that camera, the whole world is watching us. So we will have what I know will be a good hearing.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you, Mr. Serrano. I would now like to recognize Justice Kennedy for your opening statement. And if you could keep that within the 5-minute so we will have some time for questions, and certainly submit your written copy for the record.

Justice KENNEDY. Thank you, Mr. Chairman, Congressman Serrano, members of the committee. Thank you very much for your—is this on?

Mr. WOMACK. Probably not.

Justice KENNEDY. It is green. Is it on? Thank you. Justice Breyer joins me in bringing greetings from the Chief Justice and our colleagues. We have with us the principal statutory officers of our court. Seated in order, Jeff Minear, Counselor to the Chief Justice; Pamela Talkin, Marshal of the Court; Kevin Cline of our Budget and Personnel Office, who has worked very closely with your committee. And the communication between your committee and our budget people is extremely valuable. And Kathy Arberg, our Public Information Officer. And Gary Kemp, our Deputy Clerk.

As you both indicated, Mr. Chairman and Congressman Serrano, this is an interesting constitutional dynamic here this morning. We talk often of separation of powers and checks and balances, and we use those words interchangeably. Actually, they have a different thrust. Separation of powers means that each branch of the government has powers of its own that it can exercise without—and must exercise without interference from the other branches. Checks and balances means that you can not have completely separated departments. They have to work together. And this is an example of checks and balances.

We come here to indicate that as a separate branch of the government, we do think our budget request is of a high priority. Judges by nature and by tradition are very, very careful in the expenditure of the public moneys. We are good stewards of the public treasury. That does not mean that there are not instances where the Congress can point out that an expenditure might be too large or unnecessary. But over the last years, especially over the last few years, Congressman Serrano, we have been extremely careful to present you with a minimum budget.

As you indicated, Mr. Chairman, the budget for the entire third branch of the government is .2 percent of the Federal budget, .2 percent. And our budget is .002 percent. Our budget, as you indicated, is $74-plus million for the operations of the Court, which we will talk about. There is an additional $11 million for buildings and grounds. And we are very proud of our budget for the operations of the Court is a 3 percent reduction over last year. In looking at the reason for that 3 percent reduction, it looks to me like that might not be one time. I am not sure we can do it for you the next time. But we are committed to try. Because we think that the courts must always set an example for prudent and proper respect for the people of the United States and for the way in which we spend their money.

As you indicated, Mr. Chairman and Mr. Serrano, the Administrative Office of the Courts' budget, which is $7 billion, is of tre-

mendous importance to the functioning of the entire judiciary. The Supreme Court has cases that the public is very interested in, but on a routine basis we are charged with ensuring that the justice system as a whole is efficient, fair, accessible. And most of our time is spent in reviewing cases that are decided in the routine course of the administration of the criminal and civil laws of this country.

When the budget of $7 billion for the courts comes before you, I believe next week, it is important to bear a few things in mind. Number one, Congressman Serrano, one-seventh of that budget is for Defender Services, one-seventh of the Federal Judiciary budget is for the country. This is for the Defender Services, one-seventh of our budget. Then we have a huge amount of our budget, as you have indicated—I am talking about the entire Federal courts now, not the Supreme Court—a very substantial part of that budget is for supervised release of those who are in the criminal system and for pretrial sentencing reports. And this is absolutely urgent for the safety of society. Look, the Federal courts routinely, day in and day out, supervise more people than are in the Federal prison population. We supervise more than 200,000 criminal offenders, some of whom are very dangerous.

And if the Congress thinks that because of some automatic cuts this has to be cut back, you are doing a few things. Number one, in my view, you are putting the public safety at risk. Number two, you are undercutting the ability of a separate branch of the government to perform its functions. I am sure that every agency, Mr. Chairman, that comes before you will give a special reason why you should leave their budget alone. You all have to go through this. But please consider that .2 percent of the Federal budget for an entire third branch of the constitutional government is more than reasonable. What is at stake here is the efficiency of the courts. And the courts are part of the capital infrastructure of the country. They are not only part of the constitutional structure to make the government work, they are part of the economic infrastructure and the social infrastructure. The rest of the world looks to the United States to see a judicial system that is fair, that is efficient, that is accessible. And it must have the necessary support and resources from the Congress of the United States.

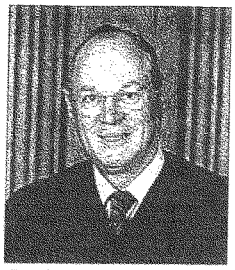
It is the same thing with respect to judicial compensation. The Congress has always been excellent in giving the resources that are necessary for the proper discharge of our duties. And we hope that that will continue when you hear and consider the request of the Administrative Office of the Courts next week. And with that, perhaps my colleague, Justice Breyer, has some opening remarks. Incidentally, Mr. Chairman, we are waiting for your case on the Puerto Rican Presidency to come to us——

Mr. SERRANO. You mean the United States Presidency.

Justice KENNEDY. But you also have to be 35 years old. Have you met that requirement? It is Article II, Section 1.

Mr. SERRANO. I may double that soon. It may come up someday. You may get someone born over there running. But thank you for your semi-opinion.

[The statement of Justice Kennedy follows:]



Anthony M. Kennedy, Associate Justice,
was born in Sacramento, California, July 23, 1936. He married Mary Davis and has three children. He received his B.A. from Stanford University and the London School of Economics, and his LL.B. from Harvard Law School. He was in private practice in San Francisco, California from 1961–1963, as well as in Sacramento, California from 1963–1975. From 1965 to 1988, he was a Professor of Constitutional Law at the McGeorge School of Law, University of the Pacific. He has served in numerous positions during his career, including a member of the California Army National Guard in 1961, the board of the Federal Judicial Center from 1987–1988, and two committees of the Judicial Conference of the United States: the Advisory Panel on Financial Disclosure Reports and Judicial Activities, subsequently renamed the Advisory Committee on Codes of Conduct, from 1979–1987, and the Committee on Pacific Territories from 1979–1990, which he chaired from 1982–1990. He was appointed to the United States Court of Appeals for the Ninth Circuit in 1975. President Reagan nominated him as an Associate Justice of the Supreme Court, and he took his seat February 18, 1988.

Stephen G. Breyer, Associate Justice,
was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children - Chloe, Nell, and Michael. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965–1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974–1975, and as Chief Counsel of the committee, 1979–1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967–1994, a Professor at the Harvard University Kennedy School of Government, 1977–1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980–1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1990–1994. He also served as a member of the Judicial Conference of the United States, 1990–1994, and of the United States Sentencing Commission, 1985–1989. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.

Statement of Justice Anthony Kennedy
Associate Justice of the Supreme Court of the United States
Before the
Subcommittee on Financial Services and General Government
of the
House Committee on Appropriations
March 14, 2013
10:00 a.m.
Rayburn House Office Building, Room 2359

Chairman Crenshaw and Members of the Subcommittee. Thank you for your kind welcome. Justice Breyer and I appreciate this opportunity to appear before your Committee to address the budget requirements of the Supreme Court for fiscal year 2014. We recognize that this hearing is one of the few occasions in which Members of the Court converse with Members of Congress. We appreciate the opportunity to discuss our budget request with you.

We have with us today Jeffrey Minear, Counselor to the Chief Justice; Pamela Talkin, Marshal of the Court; Kathy Arberg, our Public Information Officer; Gary Kemp, our Deputy Clerk; and Kevin Cline, our Budget Manager.

As is customary, the Supreme Court's budget request consists of two parts. The first part is for salaries and expenses of the Court. The second is for care of the building and grounds. Today, we will address the salary and expenses portion, while the Architect of the Capitol will present a separate statement to the Subcommittee concerning the budget request for the care of building and grounds.

We would like to acknowledge at the outset the challenging task before you. We recognize that this Subcommittee must allocate a limited pool of available funds among some 30 different federal entities. We appreciate that this task is especially difficult this

year in the face of the current fiscal situation. We are confident that every federal agency appearing before you will make a strong case of special need.

The Judiciary, however, is distinctive in at least one fundamental respect. The Constitution identifies the Judiciary as a separate and independent branch of government that performs a function the Nation's Founders deemed essential to the idea of freedom. That function, the administration of justice, produces expenses that are beyond the Judiciary's own power to regulate. The courts cannot control the scope of their jurisdiction or the volume and complexity of their work. They must adjudicate in a timely manner all the cases that are properly before them. They must do so in a manner always consistent with the dictates of due process, including speedy trials in criminal cases and prompt resolution in civil matters.

The Judiciary's request is but a small fraction of the federal budget. As the Chief Justice pointed out in his year-end report, it amounts to just two-tenths of one cent of every tax dollar spent. The Supreme Court's salary and expense budget is, in turn, a small fraction of that amount. The Supreme Court budget is only 1% of the budget for the courts. Nevertheless, it has always been the custom of the Court to attend with great care to the need to spend every tax dollar wisely and with caution. The Court has worked consistently to contain costs while efficiently managing its docket. We refer you to the tables and charts at pages 1.7 to 1.14, which show how we have managed a docket that has now grown to 8,900 petitions for review each year.

We take seriously our obligations to ask for no more funding than we in fact do need. Before we submit our budget request to you, we trim back what the Court staff thinks is optimal to what we regard as necessary. But we do not stop there. We continue

to look for and implement new methods of operating more efficiently and reducing costs. These efforts have resulted in reduced funding requests in recent fiscal years. In fiscal year 2012, the Court requested a decrease of 2.8 percent from the previous year's request. The request for fiscal year 2013 was only a 2.1 percent increase over the fiscal year 2012 request. That modest increase reflected our need to hire 12 additional police officers to meet pressing security needs. But even so, our fiscal year 2013 request was still less than the fiscal year 2011 request. For fiscal year 2014, we are again requesting a decrease from the prior year's request. The request of $74,838,000 is a 3.0 percent reduction from our fiscal year 2013 request.

The Court's fiscal year 2014 request includes required increases in salary and benefits costs and inflationary increases in fixed costs. These increases are off-set by reductions in funding for information technology, overtime, and travel. Specifically, $1,351,000 of the adjustment represents required increases in salary and benefits costs. In addition, $430,000 is requested for inflationary increases in fixed costs, allowing us to keep up with rising costs in all our operations. We will realize a savings of $1,348,000 by sharing resources with other government components to manage our financial management and personnel systems. Through careful management of our technology fund, we can reduce the request for that account from $2,000,000 to $1,500,000 as a one-year reduction in funding. As a result of belt-tightening, the Court anticipates a $300,000 savings in overtime in fiscal year 2014. The Court will also reduce travel expenditures by 10 percent in light of the government's current financial challenges. These adjustments result in a $435,000 decrease in our budget request from the fiscal year 2013 assumed budget level.

The Supreme Court's budget request is modest, but the Court's role in maintaining the legal system is central to the urgent need to guard the Constitution and its promise. Unlike the other two branches of the government, we have neither the capacity nor the power to weigh into budgetary dynamics when necessary to insure the capacity to perform our Constitutional functions. We are dependent upon the political branches of the government to exercise their constitutional responsibility to insure that the Judiciary of the United States has the resources to guarantee that the Rule of Law is within reach of all and that our commitment to its idea of government under law remains unquestioned. We urge you to consider our constitutional duties when making the difficult funding decisions before you. We hope that, when you examine our request, you also recognize our own rigorous self-policing of expenses. Our practice of requesting only essential funding gives us little latitude to absorb further cuts without impairing central operations.

Though we are not familiar with all of the details of the budget request for the judiciary as a whole, these same urgent considerations apply to all of the federal courts. We do know our judicial colleagues, and we respect and admire their caution and their sense of high responsibility in making sensible and realistic budget requests. They are on the front lines of the legal system. That system must work with great efficiency if we are to fulfill the law's promise that in a free society justice is accessible and prompt and fair. So we take this occasion to ask you to insure that all of our courts have the resources they need in an urgent way to serve our free society.

This concludes a brief summary of our request. We will be pleased to respond to any questions that the Members of the Committee may have.

Mr. CRENSHAW. Justice Breyer, do you have some comments you would like to make?

Justice BREYER. Mr. Chairman, I agree with my colleague, Justice Kennedy.

Mr. SERRANO. Well done.

Justice BREYER. I can't resist adding. I mean any lawyer always asks two questions, Mr. Serrano, Ranking Member. I would like to—and your question is could someone from Puerto Rico become President of the United States. I know many possible people from Puerto Rico who could perhaps be elected, and I modestly in this room will not say exactly who, but I would point out that lawyers always ask two questions. First, why? And the answer to that legal question, isn't Puerto Rico an important part of this country? Answer, yes. Second question—I won't answer it for you—second question, why not? And when I say why not, I don't hear any answer. There we are, I have answered with two questions.

Mr. SERRANO. Thank you, sir. I think you just made the front page of all the papers on the island, and in New York, too. Thank you.

Mr. CRENSHAW. Well, maybe, Mr. Serrano, maybe you could just run for President, and if nobody challenges that, that will be fine. And if they do, then these good gentlemen will be happy——

Mr. SERRANO. What is interesting, and I don't want to take much more time on this, because it becomes an issue when you have territories. But if you recall, the Senate, just to be sure, passed a resolution saying that John McCain could in fact serve as President, because he was born in the Panama Canal Zone, which technically is not part of a State, but it is a territory. And the Senate actually passed a resolution saying, yes, he can. I said, gee, I thought that would have to be the Court someday that would have to rule on that. But I am pretty sure, confident, and surely from this opinion, I mean——

Justice BREYER. No, I have not given an opinion.

Mr. SERRANO. I understand. I understand. You have not given an opinion, and no one here would write that. But let me just say that my exploratory committee is coming together in the next half hour.

Justice KENNEDY. You know, the likely explanation for the provision in Article II, Section 1, of a natural born citizen and 35 years of age, was so that we would not invite European royalty to come and be the occupant of the White House. Number one, the President had to be 35 years old so it would not be an infant with a governor. And number two, born in the United States so it would not be European royalty. That is probably the reason. I was not there at the time.

Mr. CRENSHAW. Well, we will get back to that issue. Let me start out questions. We talked a little bit about the financial side. And obviously, that is what our committee does is appropriate money for the various agencies that we oversee. And the one thing that you talked about, Justice Kennedy, and one thing that I would applaud that you all have done as a Supreme Court, is try to be very judicious, very efficient with the use of the taxpayers' dollars. And it is on everybody's mind now because of the issue of sequestration, which as everyone knows, is kind of a Washington word for an across the board draconian-type cuts that nobody probably thought

was going to happen. It was set up to be a kind of a deterrent to make sure that Congress did its work to find additional savings. And the special committee that was set up to do that didn't find those savings. On the good side, over the past couple of years Congress has actually reduced spending. From 2010 to 2012, overall spending went down by $95 billion. And that is the first time that had happened I think since World War II. But I think one thing we all agree on, that is that if we are going to reduce spending, if we are going to make cuts to the budget, then a better way to do that is do that specifically.

That is why we sit here as an Appropriations Committee. We hold hearings, we listen to testimony, we make tough choices, we set priorities, and sometimes we add money and sometimes we take away money. And regardless of how we feel about increasing or decreasing spending, we all agree I think there is a better way to do it than the so-called sequester.

So we find ourselves in that situation. You are part of that. I think the reductions in the nondefense side are about 5 percent; on the defense side it is about 8 percent over the remaining 7 months. And so my question is, and I think you have answered it to a certain extent, you already, it seems to me, are working as hard as you can to make sure that you are spending money efficiently. But I have to ask you, since we have this sequester and it kicked in on March 1, can you say just from the Supreme Court side, not from the broader, we will talk to some of the other administrative courts and their issues, but just from your standpoint in the Supreme Court, what kind of impact will that sequester have on you all? Does that mean you hear less cases, or you wear your robes for an additional year or two? I mean you got to save money somewhere. Tell us, number one, how that is going to impact your operations of the Supreme Court, and number two, do you think that the sequester will, maybe as you anticipated it—it seems like you do a good job—but do you think the fact that there is a sequester and you have to live under it, maybe it is a month, maybe it is a year, maybe it is 10 years, what will that do in terms of your overall planning to try to be more efficient and more effective? Could you touch on those two things?

Justice KENNEDY. If it is for any long term it will be inconsistent with the constitutional obligation of the Congress to fund the courts. We do not control our workload. Cases come to us. We don't go looking for cases. In the typical year, we have close to 9,000 petitions for certiorari, many of them from those who are convicted in the Federal criminal system, and also habeas corpus from the State criminal system. We can not control that. And we can not arbitrarily say, oh, we are going to only consider 6,000 and let the other ones just go by the board. We have no choice in that. Just like a district court has no choice in deciding how many criminal prosecutions it is going to allow, or how many civil cases it is going to allow. And if you force that choice, you are saying that the courts are not open, that the legal system is not accessible. And this is inconsistent with the rule of law.

Now, the Judiciary can, our staff tells us, I think for a few months get by with some temporary furloughs or shorter work days for our staff. If you can find a way to give us a shorter workday,

I would most appreciate it. But over the long term, particularly for the courts as a whole, it is simply unsustainable.

Mr. CRENSHAW. Justice Breyer.

Justice BREYER. Well, I would add this. As you saw in Justice Kennedy's figures here in his prepared statement, in fiscal year two-twelve—2012, you know, our twenty-first century is confusing for me—in 2012 we asked for a reduction of 2.8 percent in the budget. Then we went up, but not by that much, in 2013. And now we are requesting a 3.0 percent reduction. So we have been through it pretty carefully, and we have reduced. And the way we really reduced, the heart of it I think, is we hired a few people who understood those computers. And they are smart. And they worked out a way to share all this computer stuff with other agencies. And the result is we have cut our costs a lot there. So if we were going to save money by say getting rid of them, our costs would go up. They wouldn't go down.

Then you say, well, what do I do? I tell my children—I used to tell my children this, now I tell the school groups. I say how do I spend my day? I spend my day, I read. I read briefs. I read them and I read them. And then my law clerks help, but I have to sit at that word processor—and it is behind my desk—and I write. Now, I am there, I read and I write. I say to my son, if you do your homework really well you will get a job where you can do homework the whole rest of your life. So that is what is going on in that building. And we have some policemen who are there for security purposes who don't just protect us, but they protect the public. And then we have to keep the courtroom reasonably clean. And if you didn't keep it clean, it is not just us again who would suffer, even the litigants. If somebody comes into a courtroom and they see a column, and that column sort of has a hole in it, and the sort of inside is falling out over the floor, what do they think about justice in the United States? Those things are symbols. They don't have to be grand—ours is—but they do have to be kept up. And so when you look around and say what are we doing—and now we have a press office. And what the press office does is it tells people to try to communicate with the public what is going on. And they answer questions that reporters have so that people can know about us.

What is there to cut? We go through, we cut some travel, we saved the money, as I say, with the computers, and we have managed to cut 3 percent. I think that is pretty good, actually. And there we are. Eighty-nine hundred petitions. You know, even if you said, no, we will only hear half, which would be wrong, in my opinion, you know, you wouldn't save any money. Because we are going to read them anyway.

Mr. CRENSHAW. I got you.

Justice KENNEDY. I might just say insofar as Justice Breyer indicated public awareness of what we are doing, when we accept a case, then briefs are filed. The briefs and the transcripts of the oral argument are put on our Web site at no charge. The American Bar Association does this for us. I was looking at the statistics yesterday, and I asked my clerks to guess how many downloads, not just hits, how many downloads were there last year of Supreme Court opinions and transcripts of oral arguments? And the answer, I was astounded myself, it is just under 70 million total downloads from

the Supreme Court website. That is the education function that we are performing. We have to have technical staff that can perform this function. And again, as Justice Breyer indicated, the technology is working so fast that we are hoping there are cost savings, but it seems that the price of the equipment goes up all the time really over a 4-year cycle.

Justice BREYER. Justice Kennedy was just in Sacramento, they dedicated a library to him. It is fabulous. Part of the work that we do is talking to school groups, as you do. You know, you talk to the public and you try to explain to them, you know, we are trying to do our job, and you try to explain to them what the job is. And people don't know. They don't understand. And you can give the same speech over and over and over. And everybody does that who is in government, who is in public life. And you try to communicate over and over and over. And if say a third of a million, or a million, or whatever it is if that many people a day visit that Web site, I say thank you. That can do so much more than I can do in a thousand speeches. So I wouldn't like to change that.

Mr. CRENSHAW. I got you. Well, thank you for that. And I guess the second part of my question, would a sequester really increase your intensity to find savings? It sounds to me like you are already on that wavelength regardless of the sequester. I mean it is strange, unusual for a Federal agency to come in and actually ask for less money one year than they did the last year. And I think you should be applauded for that. And while we recognize that a sequester, an additional 5 percent cut is going to have a negative impact, we appreciate the fact that it sounds to me like you are working every day to make sure, whether it is in technology or whether it is in your Web sites, making an effort to be as efficient as you can. So we applaud that and we thank you for that.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. Once again, thank you for being here before us. I want to ask you two questions at once. I know you can't comment on specifics, but have you heard about the effects of sequestration on the Federal Judiciary as a whole? Do you have particular concerns about the administration of our justice system under sequestration? And secondly, we are particularly concerned about the budget cuts to our Federal Defenders. At what point are we seriously impacting the provisions of effective counsel to indigent criminal defendants by cutting our budget so much? So in general can you tell us what you think the effect will be on the courts and in particular on this particular program?

Justice KENNEDY. Congressman Serrano, as indicated in my remarks, the Administrative Office of the Courts and Judge Julia Gibbons, who is the chairman of the Budget Committee for the United States Courts, will be before you next week, and they will have some detailed answers on this for you. But historically, the first things that are cut when there is an across the board cut in expenditures for the courts, are pretrial sentence officers and probation officers. And this is very dangerous. Then public defenders are also on the list. I am not sure, it could be that if you cut public defender, and the indigent does not have an attorney, then the court has to appoint one and pay out of court funds for a private attorney, and it will be more. That would be a guess. I am not sure

of that dynamic, but I will ask the AO. But this is serious business. We have, oh, my guess is 100,000 criminal prosecutions a year in the United States courts. And we have to have a capital structure, an infrastructure, a functioning system to handle this. You know, when I first became a judge I thought, well, at lunch we will sit down and I will ask does natural law still affect our statutory concepts? Is lex juris still a part of the concept of law? Look, the judges say, no, our workload, I have got so much workload,—Justice Breyer mentioned I was in Sacramento, the United States District Court for the Eastern District, which would be the 12th biggest State in the Nation by population, they have asked for years for extra judges. They have a weighted caseload of over 1,500 cases per judge per year. We have four senior judges who are entitled to have only a one-third workload. They take a full workload because of their sense of duty and commitment and obligation. And we simply can't take away the resources from these dedicated senior judges who work in order to show their dedication to the idea of the rule of law. The Congress must reinforce that by giving them the resources they need.

Mr. SERRANO. And my further question would be we know that whenever there are budget cuts—and for as long as I have been in Congress there has always been the discussion. As you well said, you know, every agency feels that their budget should not be touched. So one could argue throughout the time that the courts needed more funding. But we are living through a very difficult time, and there is a desire to cut, cut, cut. So at what point does it jeopardize the ability of our system to provide fair representation, to provide the constitutional mandate and protection? And furthermore, will that be just somebody's opinion, or at what point does the judiciary itself make some strong statements to Congress perhaps to say, look, we can't continue to do it this way. You are constitutionally here on thin ice. Can that ever happen, or will we just continue to just continue to negotiate over budgets?

Justice KENNEDY. Well, at some point—the courts do not have the habit of creating crises in order to obtain public attention. But at some point, if we start dismissing criminal prosecutions, this is dangerous to the rule of law. And it used to be—there is sometimes a concurrent jurisdiction, there is a crime that could be prosecuted either in the State court or the Federal court. And the old rule when you were in practice was that if it is an easy case the Feds take it, if it is a hard case we will give it to the States. But States are undergoing even more draconian cuts than are being contemplated by the Federal Government. In the State of California, I heard there was some problem in Los Angeles County—Los Angeles County is bigger than the entire Federal judiciary. And I asked my clerk, I said find out, they are going to terminate some judges. They are saying they are closing 10 Superior courts. I thought oh, well, 10 judges, that is not that many. No, 10 courthouses in order to pay for other things. And that means there are going to be more cases that will have to be tried in Federal courts.

Mr. SERRANO. Go ahead.

Justice BREYER. Well, I was just going to add that I understand the difficulties that you are in. I think it is difficult, because everyone always says, well, what I am doing is important, and it is. But

I think one question you could ask is would a cut in this particular budget, say the Federal Defenders, actually mean greater public expense? So the way that I think about it is I say of course crime exacts enormous costs. And it does not help when a serious crime is committed to punish a person who did not do it. I think everybody agrees with that. And so it is absolutely crucial to find out the person who did do it. And that is the person who should be punished. And that means a part of that is you have a judge and part of it is you have a lawyer.

So if in fact that person can't get a lawyer, or a lawyer who is capable of representing him, one, you will get the wrong people convicted, and the right people will run around committing more crimes. Two, the person, if he is lucky, and gets into prison, will start realizing he can complain about inaffective assistance of counsel. And then he will start writing petitions about that. And eventually, the courts will spend more time and effort concerning his claim about inaffective assistance of counsel than it would have cost to give him a decent lawyer in the first place. And so at this moment I would say the public defenders are below the level that would be minimal. And it does really seem to me that there is a serious problem in terms of crime, in terms of justice, in terms of adding costs to the system if you can't protect the defenders. Every society has had judges. And I know we like to make fun of them. They are not popular, the judges, and we like to make fun of the lawyers, but every society has needed, since the beginning of history, people who would present a case fairly, honestly, so that the right people and not the wrong people are punished. And that is the job, in part, of the public defenders.

Mr. SERRANO. Thank you.

Justice KENNEDY. I mentioned in the opening statement the phrase "capital infrastructure." Around the world, parliaments, legislators, and legislatures are somewhat reluctant to give funding to courts. They think judges have an easy job, some of them wish they had the job, and it looks like it is not that important. And when we go to other countries we say look, a functioning legal system is part of your capital infrastructure. You cannot have a dynamic economy, you cannot have prompt and fair enforcement of contracts, you cannot have a safe society unless you have a functioning legal system. It is part of the capital infrastructure.

Mr. CRENSHAW. Thank you, Mr. Serrano.

Mr. Womack.

Mr. WOMACK. Thank you, Mr. Chairman. And my thanks to the Justices. And I want to acknowledge their long-standing service on the bench. And having a wife that has spent 32 years in the State court as a trial court assistant, and is still there today, I truly appreciate the work that they do up and down the entire spectrum of our judicial system. And I appreciated the two questions that the lawyers always ask. They were why and why not. Well, we are appropriators, and we ask three. What? Why? And how much? Occasionally, and we are finding this to be the case these days, occasionally we add a fourth question. And that is "what if?" And so we are in kind of that what if scenario now. I truly appreciate the fact that there are not a lot of things that you can do without that you currently have that you desperately need in order to have an

effective judicial system. And I want to drill down on one finer detail, and that is that last year there was a modest increase request for some additional officers. And I am curious if those additional resources have been put to use, what effect they are having, and indeed are they part of the what if scenario in sequestration? And what effect that would have on your Court?

Justice KENNEDY. We asked for half of the new officers we thought we needed, and it has worked out. One of the problems is if you hire too few people, then you have overtime, and it is not that cost-effective. But we have been able to curtail that. We will begin opening additional entrances to the courthouse, which we must, soon. And our security people will be strained. We can manage with what we have now.

Under the what if scenario, as I have indicated, I think our court staff has said that, you know, for 2 or 3 months we could probably get by, but after that we have a serious problem.

Justice BREYER. You are touching on another difficult question, which is where your judgment is extremely helpful, that is called security. If in fact you take, whether it is the White House, whether it is Congress, whether it is the Supreme Court, and if you have fewer marshals, policemen, you have less security. Now, less security is something that costs nothing as long as the risks don't come about. But if, in fact because you have fewer policemen and someone wandering into the building gets shot, or someone is seriously hurt, or there is some kind of incident, then you see the cost. So the question there is what risk are you prepared to run? And the people who are paid to think about that recommended that we get 24 new officers. And we got 12. So you say could you survive with no police? I guess you could survive. All you would have done is you have dramatically increased the risk, as in any public institution, of someone being hurt.

Mr. WOMACK. Is there any difference between the level of training and the cost associated with employing security at the Supreme Court than there would be, say, in a House office or a Senate office building or the Capitol? Or are they considered to be under one sort of qualification umbrella?

Justice KENNEDY. I am not sure. We send our officers for initial training to Georgia for standard police training. But we also have some officers who are experts in a fairly sophisticated business of threat assessment. And that is institution-specific. Different institutions draw different threats and attract different types of security breaches. And so it is rather sophisticated. In fact, our office works with the Capitol Police very carefully on prediction and threat assessment. And they have done marvelous work for us in that regard. So there is some sophisticated assessment that is institution-specific.

Mr. WOMACK. Justice Breyer.

Justice BREYER. Our staff here says it is basically the same.

Mr. WOMACK. Basically the same. And then finally, some cases, although they are all important, are somewhat out of sight, out of mind to the general public. Other cases are very, very high profile cases, like the Affordable Care Act decision. On occasion you have to ramp up, I am assuming, additional resources to accommodate these high profile cases. Is that a major impact on the Court? And

again in the what if scenario, do we risk, in your words, do we risk creating vulnerability for some of our more high profile things?

Justice KENNEDY. I think insofar as standard crowd control for seating in the courtroom, we have I think over 100,000 people a year see an argument, some for just a few minutes because we have a line where you can just come in and watch for a few minutes. And we almost always have a full courtroom. Sometimes the line for the high profile cases starts early in the morning or early in the evening, and there have to be one or two extra officers there.

The real risk is in the threat assessment area when the high profile cases come. That is something you don't see.

Justice BREYER. That is true. And judging from the staff reaction here, there is some extra cost in those cases. But I would not start there. After all, those are the cases where emotions run high. And people are unlikely to get upset when we hear a case of whether the comma before the word "for" in the Internal Revenue Code section—imaginary—403(c)(6) means the next word, which was a "for," should be read as a "which" or a "that." I mean we did have a case sort of like that once. But people don't care that much, or they don't get emotionally involved. They do in some of the others. And the fact that there are large numbers of people trying to get in and so forth I think is a sign that it is important to have the crowd control in those kinds of cases.

Mr. WOMACK. Once again let me reiterate my thanks to you for your service on the bench. I have a whole list of a lot of really tough legal questions, but my colleague here from Kansas is going to ask most of those questions, I am confident, and I am going to allow him that opportunity. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. I, too, want to thank the Justices for their service. There is sort of a built in reflex when you practice as long as I did of "may it please the Court" and wait to get asked questions that are making me sweat. But it is 10 years, 26 in California and Chicago as a criminal defense attorney, highest conviction rate in the county. But that is usually funnier in Chicago. One of the things you talked about, both Justices did, was communicating with the public. And it is an issue we struggle with at the State level, and that is televising the proceedings. Now, there is a video—I mean there is an audio of the Supreme Court, but it gets to your point. One of you mentioned the public doesn't necessarily know how things work. Clearly, the public's trust in almost all government institutions is at an all time low. The perhaps way overused expression from I think 1916 from Justice Brandeis about Sunshine being the best disinfectant, is that issue still possible to televise the proceedings of the Court?

Justice KENNEDY. We take the position—my position is, and I think a number of the other Justices—that we are a teaching institution, and we teach by not having the television there, because we teach that we are judged by what we write, the reasons that we give. Now, you could have an Oxford-style debate if you were in college, and if you drew the side that said you want cameras in the courtroom you could make a number of very important points. Number one, as you indicated, Congressman, we are in the business of teaching. Not everybody can see an oral argument. It is a

great civics lesson. For the attorney who is going to appear for the first time, it would be invaluable to have some tapes to see how the oral arguments work. You can't get exactly the dynamic from the oral transcripts. So if you were making debate points you could score a tremendous number of points by taking the affirmative position that we should have cameras in the courtroom. It is not an unreasonable position.

We feel, number one, that our institution works. And in my own view, there would be considerable reluctance to introduce a dynamic where I would have the instinct that one of my colleagues asked a question because we are on television. I just don't want that insidious dynamic to intervene between me and my colleagues when we have only half an hour for each case. So we think that in our courtroom that cameras would be inconsistent with the tradition of oral argument of the Court that we have. I say we, I think I speak for a majority of the Justices and myself. Sometimes in trial courts the cameras are good so the public can see when the system is broken, when it is not functioning. That is important. That is important. And one of the things we are facing is with newspapers facing critical financial problems, they are laying off court reporters, that is to say press reporters who go into the courtrooms, police court reporters. And this is very—this is a real check, because you need an experienced reporter to know if that judge is being irascible and unfair or just necessarily stern with an attorney. You have to have an experienced reporter to understand that. And the blogs won't take care of it. Blogs can fill in for what a lot of newspapers do, they can't fill in for this. So it may be that cameras in courtrooms are more important, and not less, when experienced police reporters are not paid by the press to do the job they historically did.

Mr. QUIGLEY. Justice, I have seen a lot of theatrics in courtrooms, and some of it begat, I suppose, from TV cameras or an attorney advertising. And in all my life I can't imagine the Supreme Court acting in a way other than that which they normally would whether there is cameras there or not. But I respect your point.

Justice Breyer.

Justice BREYER. It is quite a difficult question, and I get asked a lot. When I think of a case, remember the Arkansas case, which was whether you could have term limits in the House. It was could you limit term limits. And my goodness, that was a difficult case. You see Jefferson, you read he said one thing. And Hamilton and Madison said another thing. And Story said another thing. And you go back into history and it is really evenly balanced. And if a million people could have seen that oral argument, I thought that was one of the best oral arguments you had. You would have seen nine people really struggling with a very, very hard issue, and trying to reach the correct result. So that would be so educational, that would be wonderful. So that is the plus side. So you say, well, why are you hesitant? And I absolutely begin where Justice Kennedy does: we are a very conservative institution with a small C. We are there as trustees. It was going before we came, it will be there after we go. And the last thing any one of us wants to do is to do something that will make it worse as an institution.

So what is the relevance of that? Well, I sometimes worry on a subject you will know better than I do, we are a symbol. If we bring the cameras into the courtroom it will be in every criminal court in the country. You want it in every criminal court in every case? What about juries? What about witnesses? What about intimidation? I worry about that, but there I say you are the expert, I am not. Then I think, well, you know, the oral argument is only about 2 percent. It is not oral argument that matters in a case. It matters in a few cases, yes, and it helps always. But that is not what this is turning on. That is an appellate court argument. You have been in appellate courts, you understand it. And I am trying to decide a matter of law which will affect 200 million people who are not in that room. But when you look at something on television, as opposed to reading about it in the newspaper, you identify. Human beings identify with other people. There is the good one, there is the bad one. And then they get the quotes, and believe me there is the good one and there is the bad one. And, and so I think that is not what I am here to do. And so will people get a wrong impression? But if you want to know, I have come to the conclusion, and I might be wrong, what I think is the really driving force on the negative side is this. The people who you would find surprising, I won't say who they are, they come to me and they say be careful. You think it won't affect you, your questioning. You think it won't. I mean we have the press there every day, but believe me, if I am onto something with a lawyer I don't care. I might produce the most ridiculous example that I have ever thought of because I think it is going to advance me with that lawyer, that is I am going to get a question out of him, I am going to get an answer, and I don't care if I look a little bit stupid in the newspaper. I would rather get the answer. Okay. So that is my method. And what they say to me is you think you won't change. The first time you see on prime time television somebody taking a picture of you and really using it in a way that you think is completely unfair and misses your point in order to caricature what you are trying to do because they don't believe in the side they think you are coming from, the first time you see that, the next day you will watch a lot more carefully what you say. Now, that is what is worrying me. So you say, well, so what, what is your action? And I say I am not ready yet. I mean I want to see a little bit more of how all this works in practice. I would give people the power to experiment. I would try to get studies not paid for by the press of how this is working in California, of how it affects public attitudes about the law. I would write some real objective studies. I know that is a bore. But that is where I am at the moment.

Mr. QUIGLEY. Thank you. Mr. Chairman, I am going to yield back. But I would like the Justices to contemplate something I thought about last night when I was thinking of asking you this question. When the movie Mr. Smith Goes to Washington was released, Members of the U.S. Senate didn't want it to happen because they thought it made them look bad. At the same time, the representatives in the Soviet Union didn't want the movie shown there because they thought it made us look so good. I think there is a beauty in the history of the Supreme Court and what takes place there. And I think about what it would mean if generations

to come could watch the arguments that took place in Brown v. Board of Education, or Gideon, extraordinary moments that changed history and made our country a better place. Watching at least 2 percent of part of that I think is very, very important. And I think what you do is absolutely critical. I think there is a beauty to our system that is unparalleled in the world. And I would like my kids to watch it.

Thank you.

Mr. CRENSHAW. I can remember as a young lawyer watching the oral arguments in the Charlotte-Mecklenburg, the famous bussing case. And that is still vivid in my mind. That would be great to have the video, to play that from time to time. That was probably 30, 45 years ago. Anyway, thank you.

Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. Justices, it is my honor to have you all here today. Certainly I appreciate your noting the conversations you have around the world about the rule of law and how important it is to have an independent judiciary. And part of our role is to make sure that the resources are there so that you can do your job effectively to sustain the rule of law in this country. So thank you for the work that you do in that regard, and you are not just another Federal agency that is here to ask for some programming dollars. You are a third branch of government, or maybe the first branch of government in your eyes, whichever it maybe be. I don't know that they are ranked or not. But you are a co equal branch of government, and we have a responsibility to make sure that the resources are there necessary to ensure that the laws that we create here are upheld in a fair and judicious manner. So thank you for that.

As a young attorney and University of Kansas law grad, I always want to put in a good plug. And to the extent I know, Justice Kennedy, you had KU grads on your staff there, I am not sure, Justice Breyer, if you had, but if not it is a good time to think about it. Always good to have a good Jayhawk on your team. I wanted to talk a little bit about the allocation of resources beyond just the Supreme Court, and if you might help us in that regard. I did note in your testimony that only 1 percent of the entire Judiciary's budget is the Supreme Court. So the other 99 percent, and the large bulk of the expenses and the challenges that we have and the things we have in our own Federal courts, making sure that they are fully properly funded, and that they don't have backlogs is an important component of what we are all trying to do here.

I note some courts have heavier caseloads than others. We have particular courts that are continually having too heavy a caseload, and they are having a struggle to be able to resolve that. We discussed this a little bit a couple of years ago when you were here, and I wanted to return to this topic again. As we are looking at the sequester and as we are looking at certain things that are going to affect how the judiciary handles their resources, are there fundamental changes we could make—or maybe fundamental is not the word—are there structural changes that could be made either in the amount of jurisdictions or the amount of different courts that we have in a way that maybe we have some courts that have less resources than more? How do those decisions get made in

terms of how we would go forward on that? And are there structural changes, not just looking at technology, not just looking at, you know, finding ways to reduce staffing where we have to. But are there things that we could look at structurally that might make the judicial system more efficient and could work better on less dollars?

Justice KENNEDY. That is such a difficult question I am tempted to give it to Justice Breyer first. To begin with, as you have indicated, the courts, depending on their location, have different caseloads. Our courts along the southern border are simply swamped with immigration cases for the obvious reason. Our judges are very good. One of the benefits of the Federal judicial system is that we can take Article III judges from all over the country and assign them. And our judges are very good about doing that. But intercircuit assignments does not quite solve the problem. I think sometimes that you can take a look to see if laws are producing litigation that is not necessary, that is very expensive. The whole question of tort reform is something that the States ought to look at. California has done it rather successfully in the medical area. So you can look at the substance of the laws that you pass and look at the litigation impact that those laws would have.

Justice BREYER. Well, I have a couple of ideas, but I will suggest one that I have thought about a little bit, and the other I won't suggest because I haven't really thought it through. But the first one that used to be of interest to me when I was chief judge of the 1st Circuit, which was more administrative, is there has always been tension and a problem between GSA and the courts, because the courts have to pay GSA rent. You see? And the executive branch doesn't pay for court services. I mean the judiciary provides all the services to the executive branch they want for free. But why then do the courts pay for the services the executive branch gives to them? Now, I am certain some work can be done there. And I am certain that if you could separate those two things out—I am not certain, but I think it might help in respect to having a more rational allocation of what tends to be a large share of the court budget. And I have a few other ideas, but probably sometimes I have a good idea and it is surrounded by 10 rather bad ones. So I think I will stop.

Mr. YODER. I was hoping you could give an example of some sort of—maybe an absurd example like you were discussing earlier that we could capture on camera here and they could play later on the evening news. This would be your one chance to do that.

Justice Kennedy, I might follow up on your point which I hadn't really raised but is a good point, are there particular items that are generating a large amount of litigation that we could discern through some sort of analysis or report that the judiciary could provide? How would we go about finding out where those pressure points are?

Justice KENNEDY. I think we have good statistics in the district courts and the circuit courts on the numbers of cases that a specific law has introduced. One reason our civil case log, our civil case docket is down in the United States Supreme Court is new statutes that Congress passes produces litigation. And there haven't been many major statutes—last year the health care statute is one, but

that takes a long time to come up to us. The Bankruptcy Reform Act was, oh, more than 10 years ago, has produced cases. New statutes passed by the Congress generate cases. Dodd-Frank and the other securities act, the financial cases have not seemed to produce much. But those cases are beginning to work their way through the system.

Justice BREYER. I will add one thing which might be useful: you are triggering some memories, and the problem doesn't change very much over 30 or 40 years. It is more pressing now, but it has been around a long time. And there were two things, one I went to and the other I read, years ago, that I thought were very useful in this respect.

One, Chief Justice Burger used to have Williamsburg conferences where he would invite Members of Congress, their staffs, as well as judges to discuss all kinds of issues of interest to the judiciary, of less interest to Congress, but some were interested. And one year it was this subject, exactly this subject of how could you make the judiciary more efficient. And people had a range of papers, very interesting. All sorts of ideas in that. And I think that it would be perhaps interesting for you to read, or your staffs to read.

The other was Lee Campbell, who is a judge in the 1st Circuit, was on a commission or head of the commission called The Judiciary of the Future or something, and that was probably 20 years ago, in the 1980s sometime. And they were considering different ways of restructuring or other reforms if the judiciary continued to grow in its caseload. And so I think in that you will find a variety of rather interesting ideas of what to do as the input increases you don't want to diminish the output, but you want to have a more efficient way of getting to the same output, of letting it go up proportionately.

Justice KENNEDY. The judiciary has found that if a judge—in a civil case—gets into the litigation early and has settlement conferences and attempts mediation and so forth, that you can reduce the caseload and maybe come to a settlement that the parties think is efficient. That is costly for the judge. It takes a lot of time for the judge. And if per chance the case is not settled, a lot of that effort has been wasted. One of the things we are finding is that the major civil litigation in the United States is being taken out of the Federal judicial system and going into arbitration. And it is a matter of great concern that this judicial system, which so many of us have devoted our lives and careers, is not seen as the fairest, most efficient, most effective way to resolve disputes. And it is not. But that is in part because of the substantive laws that make it risky for major defendants to go into the litigation system. Many, many lawyers tell me we will tell our clients we think you have a very good case, we think that you should prevail, you can't take the risk. And there is something wrong with that.

Justice BREYER. You may know, Judge Gibbons is going to talk about this next week. The Judicial Conference is now studying cost containment and structuring and making an effort to achieve an objective of cost containment through structuring. And she is going to discuss that with you.

Mr. YODER. Maybe I will try to read those documents between now and next week that you suggested. Hopefully they are thin

reading. Thank you for that. I appreciate all the ideas. And I guess, Justice Kennedy, the notion that big statutory changes create the opportunity for litigation, whether it is bankruptcy or Dodd-Frank or health care, so certainly as there is gridlock in Washington, D.C., that is, I guess, an aid to the courts in that we are not getting some of those big acts right now. So you can send us a thank you card on that.

With that, Mr. Chairman, I yield back. Thank you.

Mr. CRENSHAW. Thank you. We have been joined by the ranking member of the full Appropriations Committee, Ms. Nita Lowey. And I would like to welcome her and ask her if she has any questions she would like to pose.

Mrs. LOWEY. I do, Mr. Chairman. And unfortunately or fortunately, one of the responsibilities is to go to almost all the Appropriations hearings. So I apologize that I am delayed. And I just want to say that it is such an honor for me to have Justices Kennedy and Breyer here before us today. My husband, as you know, Justice Breyer, has been practicing law for over 55 years. And he has never had the honor of asking you questions. So I don't know if he is watching C–SPAN, but believe me I am going to tell him about this. So I thank you very, very much. And I really appreciate your dedication to our country and the court. We are honored.

Justice BREYER. Thank you.

Mrs. LOWEY. Now, just one question and then one comment. If the sequester were to continue, the Federal judiciary would see a reduction, as you know, of approximately $350 million. Chief Justice Roberts recently noted that a significant and prolonged shortfall in judicial funding would inevitably result in the delay or denial of justice for the people the courts serve. I am very concerned that bankruptcy proceedings, civil cases, will be delayed, that U.S. attorneys will not have the resources to prosecute important cases, and that when some criminal cases go to trial delays could infringe on a defendant's right to a speedy trial, potentially allowing the wrong people to walk free.

A simple question. Are you concerned that the sequester could ultimately infringe on a party's right to a speedy trial or other elements of due process?

Justice KENNEDY. I could adopt your really carefully thought out question as my answer.

Mrs. LOWEY. Thank you.

Justice KENNEDY. All of the risks, all of the potentials, all of the concerns that we have about long-term sequestration are encapsulated in your question. Yes, trials would be delayed. Yes, bankruptcies would be delayed. Remember, bankruptcies are a way for businesses to start over. This is cost efficient. One of the signers of the Constitution went bankrupt. This is an old problem. And bankruptcy judges, some of the hardest working judges in our system, and they have to know a tremendous amount of law. They have to know bankruptcy law, they have to know State law, they have to know community property law, they have to know tort law, they have to know all of our law. They have tremendous workloads. But they keep this economy going. And if you slow that down, if you slow down civil dispositions where contracts are waiting to be enforced, whether a plant is going to be built and so forth, whether

damages are going to be paid to someone who was the victim of a breach of contract, if you are going to potentially cause dismissal of suits because—of criminal suits, criminal prosecutions because of delay, then you are threatening the efficiency of the legal structure. And if you have an inefficient legal structure then the economy does not recover properly.

Justice BREYER. Yes. I agree. It is a question of how long, how much.

Mrs. LOWEY. Thank you very much. And then I just have one other comment that I want to share with you. This month you will hear cases that are of the utmost importance to many American families, that is whether gay Americans have the same constitutional rights to marry as straight couples, and whether Congress can deprive legally married gay couples of Federal recognition and benefits. I mention this not because I expect either of you to speak to this issue. In fact, I know you will not. President Bill Clinton, who signed DOMA into law and now requests its demise, recently wrote, the question of these cases rests on, quote, "Whether it is consistent with the principles of a Nation that honors freedom, equality, and justice above all, and is therefore unconstitutional," end quote.

In the time that has passed since 1996, my views, along with President Clinton and Obama's and many of my colleagues, the country's, the face and makeup of our families have all changed for what I think is for the better. Those of us in Congress, regardless of religion or party, represent human beings in loving relationships who wish to have the rights granted to those of us sitting on this podium today. I cannot in good conscience tell my constituents that their country does not value their bond, their commitment, or their family. I ask you just to consider my words, and thank you again. It is a privilege to have you before us today. Thank you.

Mr. CRENSHAW. Thank you, Mrs. Lowey. We have got a little bit of time. And I wanted to ask, as a second round of questions, a couple of appropriations questions. I mentioned earlier, and I think in your remarks, $3 million of your request this year of the $86.5 million was for some operations, I guess maintenance, preservation. As I go by the Supreme Court, I guess is that the West Front that looks like you are working on it? And then the East Front, and I understand there is the request for some money to fix up the I guess it would be the north and the south. Maybe you can just tell me a little bit about what is going on I guess I would call it the front and the back, and what is next in terms of the facade. I guess the Architect of the Capitol makes that decision. When I was chairman of the Leg. Branch Subcommittee we funded his office, and he had a long list in terms of priorities of what needed to be done. We can't always afford to do everything. But I assume that that moved up on his list, and that is why it is in your request. Could you talk briefly about that?

Justice KENNEDY. What is happening is, and this was not predicted, at least we did not know about it, is the marble on the Court, because of moisture, because of flaking, because of exposure to the elements is beginning to come off. And it is actually life-threatening. Some big chunks of marble have actually dropped down. So that scaffold that you see will move all around the build-

ing. And it will take a couple years to finish. They have what they call a scrim, which is what they use in ballet productions and dramatic productions in theaters, which is a screen canvas that is porous to light but yet there is a painting on it. So what you are looking at is not really the Supreme Court, it is a picture of the Supreme Court. It is absolutely fascinating. And it kind of reminds me of the allegory of Plato's cave. I don't know if I am in the cave or out of the cave. I see these shadows. So we are going to have to put up with this. But this was not optional unless the building is to be torn down.

Mr. CRENSHAW. Do you have to finish the work that you are doing now on the east and the west before you start moving around the building to do the——

Justice KENNEDY. I don't know exactly. My understanding is it is going to be done in quadrants, and they will finish the front before they do the sides. The front is the most dangerous part because that is where it was actually falling.

Mr. CRENSHAW. I got you. And then that $3 million was the number given to do the next part, the east front.

Justice KENNEDY. We understand that that is for the total, that is for the total cost of going all the way around the building.

Justice BREYER. Staff says the east and west has been funded.

Mr. CRENSHAW. Got you.

Justice BREYER. Now the additional is for the north and south.

Mr. CRENSHAW. Got you. While I am talking about that, when you go by the Supreme Court you see a big hole that is next to the Supreme Court. Is that something you all are working on or is that somebody else?

Justice KENNEDY. That is going to be a vegetable garden so that we can reduce costs. Actually, it is part of the landscaping. We had to tear it up in order to make the subterranean addition for the improvement that was done some years ago.

Justice BREYER. This is the Architect of the Capitol. And he understands it and creates the budget.

Mr. CRENSHAW. I got you. One other question. In 2013, it is my understanding that there was a million dollar request made for some police radio funding. And as I understand it, the committee didn't provide that million dollars. Do you know whether the police radios were upgraded or acquired? And if so, where did the money come from? Anybody know?

Justice KENNEDY. We will have to get back to you on that.

[The information follows:]

The Supreme Court has not found a source of funding for this upgrade, which is still needed. The current Motorola VHF radio infrastructure, which has been in place for 10 years, is about to reach end-of-life and will no longer be supported after 2015. Upgrading to the next generation of radio equipment would allow the SCUS Police to fully utilize technology advancements made in portable and mobile subscribers. Additionally, the upgraded system would leverage a hosted Motorola Key Management Facility that the Supreme Court has access to via Memorandum of Agreement with another federal agency. This access eliminates the need to install a one million dollar Key Management Facility, as well as procuring the manpower required to administer the system.

Justice BREYER. Staff says it wasn't us.

Mr. CRENSHAW. Okay. It wasn't you. Maybe it is the Architect of the Capitol again. Thank you for that. Mr. Serrano, do you have other questions?

Mr. SERRANO. Yes, I do very briefly, Mr. Chairman. But first I would like to sort of bend a little bit of the protocol of the subcommittee to say from where we sit it has been wonderful to see, and you can't see this, the number of young people that have spent time this morning watching this hearing. They have been in the back. They have been in and out. But large groups have stayed for a long time. And, you know, I am always interested, as we all are, in how they see our system, how they see our country, and what they want to do about it in the future in terms of their involvement and their opinions. And so to have two of the branches here discussing the vegetable garden and other issues, but the whole idea is something that we can be proud of today that we were able to be here.

Let me ask you a question. As in past years, I continue to be interested in seeing an increase in the number of minorities selected for Supreme Court clerkships. I know that there has been an initiative in place at the Federal judiciary to help recruit more minorities into clerkship positions. Do you think these efforts are starting to bear fruit at the district and appellate levels? And also, a joint question, as you speak at commencements, and law school seminars, and court competitions and other things that you do with young people, is it part of the message to encourage some folks to apply for these positions?

Justice KENNEDY. I taught night law school for many years, and have been teaching in Europe for 25 years. And Justice Breyer, of course, was a regular member of the faculty. I am sure that all of our colleagues encourage young people to apply for clerkships. I used to tell applicants for a clerkship when I was a Court of Appeals judge, they would come and say that they wanted to be with me for a year. I would say I just have to tell you, truth in advertising, you would learn a lot more if you were with the district court. District courts have to do everything we do, they have to write opinions, they have to research cases, plus they try cases. You can really learn a tremendous lot. They say, oh, no, I want to be with you. I said, I know, I know, I understand.

If you have a clerk who has been with the district court, they really have a respect for the record and a respect for the evidentiary process that young people that have been just in the appellate system sometimes need training. And so I really encourage clerks to start with the district courts. It is simply wonderful. One of the advantages of being a United States Judge is you have these young people, we have them for just 1 year, but you know the secret of youth is youth, and if you are surrounded by young people it gives you new perspectives, new insights, new energies.

Mr. SERRANO. Great.

Justice BREYER. I have had quite a few minority clerks, a lot, actually. And the question is has there been a change over time in that? And it has been an improvement in the sense that I haven't had to look as hard. And, you know, you have had to do a lot of encouragement. You had to make a little effort 15 years ago. You know, you can apply, and please, and so forth. I would say the ex-

tent to which it requires an effort is improved, less in other words, but it still does require something of an effort. Less than it did. But I think consciousness is important. And so I think it is good to encourage people, that is right, at these different levels. And you will see, you know, you are not doing anybody a favor, you will see the effort pays off. And it is worthwhile.

Mr. SERRANO. I have one last question, Mr. Chairman. And that is the issue that we have discussed before about applying the Code of Judicial Conduct to the Supreme Court. We know right now it applies to other judges, for the Court it applies as an advisory situation. Different thoughts in the past. Have the thoughts changed on that whole issue of applying the Judicial Conduct?

Justice KENNEDY. I have never had a problem with it because in my own professional career, and I am absolutely confident in the career and the manner in which my colleagues conduct themselves, we consider those guidelines absolutely binding. The problem is those guidelines can and should be made by members of the relevant judicial committee of district judges and circuit judges. And we think it is potentially difficult for circuit judges to make rules that are binding on us. That is the binding part. As a matter of following those precepts, we follow those precepts. I think Justice Breyer, as I recall the last time we were here, explained very well that there are some differences. Recusals. If there is any reason at all for a district judge or a Court of Appeals judge to recuse himself or herself, they will do that. But on our Court, if we recuse without absolutely finding it necessary to do so, then you might have a 4–4 Court, and everybody's time is wasted.

Justice BREYER. That doesn't mean it is different guidelines. I have in my office the seven volumes. And they are all in nice leather. And if there is a recusal problem I, like the other members of the Court, go right to those seven volumes and look it up. And we each have a system in case we can't figure out what the answer is. And I call some ethics professors. There is one I call particularly. And I ask what is your interpretation? What should I do? Okay. So I see no difference right now between the Supreme Court and the rest of the courts in terms of the binding nature. If you go pass a law about it, it raises questions. So that is, you know, people love to argue those kinds of questions. Who has the right to do what? I tend to think don't raise unnecessary questions. And I don't see any necessity now. And the differences that come about are just what Justice Kennedy said. And you don't want to be manipulated by somebody off of a case. So you are careful about sitting, as well as not sitting.

Mr. SERRANO. Well, I thank you for your answer. And I have no further questions. I thank you for your testimony today, and thank you for your almost opinion on my case. It will be fine. And we continue, certainly, and I know the chairman shares this view, or I share it with him, our role is to strengthen the judiciary, to make sure that even during these difficult times the whole system is able to do what it has to do on behalf of our communities and on behalf of our democracy. You know, what was beautiful about those young people being here today seeing these two branches speak to each other is the fact that we have a system that allows that and a system where we can ask questions and get answers and continue to

function. And sometimes I think we forget that. We celebrate people in other countries going through revolutions, but we never wonder what it is that they want. And I suspect that in many cases what they want is exactly what we have, or something very similar to it. And I celebrate that today as I speak to you.

Thank you.

Justice KENNEDY. Thank you.

Mr. CRENSHAW. Thank you, Mr. Serrano. And maybe before you go, as an aside, the last time that I was on this committee, I guess a couple of years ago, and we were sitting around chatting, and Justice Breyer, you won't remember, but as a young law student I can remember there was a case—I can't remember the name of the case—and I always thought it was Marbury v. Madison, but the statement in the case was that I have always remembered, basically it said versatility of circumstance often mocks a natural desire for definitiveness. And I always thought that was interesting, well said. I am not sure exactly what it means. It is kind of Supreme Court-ese. I think it means maybe you got to be flexible. But when I asked Justice Breyer if he remembered maybe what case, his response was, well, just go Google it, which I did, and it didn't come up. So Justice Kennedy, you weren't here that day. Does that ring a bell? Can you cite a case that that sounds like it may have come from?

Justice KENNEDY. It does not sound like John Marshall. John Marshall used to see how many lines or couplets of Pope he could remember, he could memorize. And he had over 600. And that affected his writing style, because Pope has a balance and so forth. Lincoln and Churchill shared something in common, they both read very few books, but they read them again and again. Lincoln because he didn't have any, so he read the Bible and Shakespeare again and again. And Robert Burns. And Churchill by choice. He thought that you should read good books again and again. But not too many books. So he read Gibbons, the Decline and Fall. And if you read Churchillian prose, it is Gibbons. And the quote you gave is sufficiently baffling that I think it might come from Cardozo, but it doesn't——

Mr. CRENSHAW. I am going to keep looking.

Justice BREYER. I tell you who it reminds me of, I think it is a good point both for legislators and judges I think. 1584, Montaigne. Fabulous essay on human experience. Now he talks about law. And he says, Justinian got really angry at his judges, or some Roman emperor, I don't know. And he said, I am going to fix those judges. What I am going to do is I am going to pass a code that is so complicated and so detailed that they will then have to follow what the code says, and they won't be able to substitute their own judgment. And Montaigne says, you know what, he was really stupid, he says, because what he doesn't understand is every word in a statute is just meat for the lawyers. The more words you have, the more arguments you have. The more arguments you have, the more the judges can do anything they want. And he said that is the worst possible thing. And he says I would rather live in a country with no laws than a country with too many laws like France. That is what he says. 1584. And he says, by the way, the reason is just what you said. The reason is because human experience is such

that when you try to draw lines, experience overflows the boundaries. And what we discover is circumstances come up that we never thought of. So you have to keep a little flexibility. I think that is the point. And I love remembering that as a judge. And when I used to work in the Senate, I don't know if I knew it then; I must have read it sometime. I worked on the staff there, and I thought it is pretty good for legislators or staff members.

Mr. CRENSHAW. Great. We have been joined by Mario Diaz-Balart, a member of the subcommittee. Do you have any questions you would like to pose?

Mr. DIAZ-BALART. No. Mr. Chairman, I want to apologize. I was in another hearing right now. I apologize I got here so late. Good to see you gentlemen.

Mr. CRENSHAW. These are busy times for all the members.

Mr. SERRANO. Mr. Chairman, I just want to state that I feel a little left out not being a lawyer in some of these conversations. But I did play a judge on Law and Order once. So I don't know, maybe I just skipped that part of, went right to the judgeship.

Mr. CRENSHAW. Well, it is not all that bad. But again, we do thank you for being here today, for your willingness to come and testify. And it is one of the I think most interesting hearings that we have, to see the exchange between what is a very, very important branch of our government, and that we can have this kind of dialogue. So thank you very much again. We appreciate it. This meeting is adjourned.

MONDAY, MARCH 18, 2013.

DISTRICT OF COLUMBIA COURTS AND COURT SERVICES AND OFFENDER SUPERVISION AGENCY OF THE DISTRICT OF COLUMBIA

WITNESSES

HON. ERIC T. WASHINGTON, CHIEF JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

HON. LEE F. SATTERFIELD, CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

NANCY M. WARE, DIRECTOR, COURT SERVICES AND OFFENDER SUPERVISION AGENCY

CLIFFORD KEENAN, DIRECTOR, PRETRIAL SERVICES AGENCY, COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Mr. CRENSHAW. It is 3 o'clock so we will start the hearing. I got off an airplane 9 minutes ago. Mr. Serrano is still on a train. So he will be here very shortly. But we will start the hearing. So I want to welcome everybody.

Today the hearing is on the District of Columbia Courts and the Court Services and Offender Supervision Agency, better known as CSOSA. Similar to how a state government funds a state court system, the National Capital Revitalization and Self-Government Improvement Act of 1997 made these agencies the responsibility of the Federal Government. So the budgets of these agencies are not considered by the Mayor or the D.C. Council, but instead are proposed and transmitted with the President's budget request. Three-quarters of the Federal funding this subcommittee provides for D.C. is for these important agencies that serve and protect the citizens of the District of Columbia.

Today I would like to welcome Chief Judge Washington of the Court of Appeals, Chief Judge Satterfield of the Superior Court and Director Nancy Ware of the Court Services and Offender Supervision Agency, CSOSA. Thank you all for being here today and testifying.

We all know that an independent judiciary is something that all the citizens can trust and respect, and that is essential to our Nation, to our democracy and to the rule of law. And equally important is each citizen's right to a fair trial in any legal dispute. The D.C. court system does an incredible job of ensuring this for their citizens. The Moultrie Courthouse sees about 10,000 visitors a day. In addition, CSOSA has a huge caseload of its own, supervising over 25,000 offenders annually.

We are all interested in hearing from you and the impact sequestration is having on your operations. As I said before, operating the government under continuing resolutions and sequestration is not the right way to do it, and I think Congress should be funding quality programs well and reducing or eliminating wasteful pro-

grams, and I know Mr. Serrano and Mr. Quigley and all the members of this subcommittee agree with me that we want to get back to regular order in fiscal year 2014.

Although the crime rates in D.C. have dropped within the past few years, we are still faced with dangers that all big cities are challenged with. These agencies are absolutely critical in protecting those who work, live and visit our Nation's capital. We appreciate your hard work and look forward to hearing your testimony.

So I would now like to recognize Mr. Serrano, but he is on a train, so in his good stead I would like to recognize Mr. Quigley for any opening comments he might have.

Mr. QUIGLEY. Mr. Chairman, thank you. I thank you for holding this hearing and I want to thank our distinguished panel for being here. I feel at this point since I am so new to this committee and the subcommittee, that anything I could add at this moment would pale in comparison to the ranking member's thoughts, so we will wait for his arrival for that. I look forward to listening to this panel and asking them questions.

Mr. CRENSHAW. Thank you, Mr. Quigley. We all know Mr. Serrano is apt to make an opening statement anywhere any time, so we look forward to his arrival.

I would like to now recognize Chief Judge Washington of the D.C. Court of Appeals for an opening statement. If you could limit your remarks to about 5 minutes, that would give us more time for questions. Your full statement will be included in the record.

Judge WASHINGTON. Thank you. Good afternoon, Mr. Chairman, Congressman Quigley and, of course, to the ranking member Mr. Serrano who I am sure will be here, and Congressman Womack and the rest of the subcommittee. My name is Eric Washington. I am the Chair of the Joint Committee on Judicial Administration in the District of Columbia and the Chief Judge of the District of Columbia Court of Appeals. I have the pleasure of serving in those roles along with my colleague who is accompanying me here today, Lee F. Satterfield, the Chief Judge of the Superior Court of the District of Columbia. We thank you for having us here this afternoon and appreciate this opportunity in the absence of a budget submission to update you on key aspects of the work of the D.C. Courts.

Earlier this month the court introduced to our employees our third 5-year strategic plan entitled "Open to All, Trusted by All, Justice for All." The title is also our vision for serving the public in the District of Columbia.

The Courts' strategic plan provides the framework for our budget submission, our Court's operations through division level management action plans, what we call MAPs, and our employee performance plans. All court initiatives must support the goals and objectives of our strategic plan in order to get the support of the Joint Committee.

In support of the plan's first goal, the one that is critical to what we do for the citizens of the District of Columbia, fair and timely case resolution. The Court of Appeals has been working over the past several years to enhance the timely resolution of its cases.

According to statistics compiled by the National Center for State Courts, the D.C. Court of Appeals has the highest caseload per capita of any jurisdiction in the country and, despite our relatively

small population, the second highest number of case filings of any jurisdiction without an intermediate court of appeals.

We appreciate the support of Congress and the President for a new case management system and additional law clerks to help us in this effort to expedite case processing. The new technology helps the court manage its large caseload and connect to the Superior Court case management system from which we are now able to obtain the trial records electronically. This has increased efficiency and the court has revised its internal operating procedures to better take advantage of this increased efficiency by designating the trial court record as the record on appeal.

We are pleased to report that these efforts have begun to show results. The Court of Appeals has steadily reduced its median time on appeal from a high of 505 days in 2007 to less than a year, 352 days, in 2012. But more work remains to be done and we are committed to using the resources you provide to us to increase even more the efficiency of our case processing.

In the Superior Court, our trial court we resolved more than 102,000 cases last year and have the Nation's second-highest per capita incoming civil caseload. Courtwide performance measures have been adopted to address case processing activities, court operations and performance. As part of our efforts in this regard, a multi-year business intelligence initiative was established to enhance performance analysis, reporting and public accountability. That is important because through that business initiative we are able to get snapshots through an integrated view of our processes and of our performance, and then make decisions in a more timely fashion about how to better use our resources to address the needs which are being reflected in any particular year.

We have done a lot in the access to justice area, primarily we have established a number of self-help centers. Those self-help centers are in areas where we have seen a large increase in litigants without lawyers, unrepresented individuals who need help. You can imagine where those areas are. They are in small claims. They are in consumer areas, they are in areas of landlord-tenant and foreclosure.

We have established calendars and specialized courts in order to address them. We have established self-help centers connected to those calendars where we have volunteer lawyers from the bar, Legal Aid, and other volunteer organizations who come in and help to provide free access to legal services to assist litigants in getting through the process and getting into court. Once they are in court, we have taken steps to amend our judicial Code of Conduct to make clear and further clarify how judges can interact with unrepresented litigants in a way that will allow the court to effectively hear the issues that they wish to bring forward while at the same time making sure that judicial actions are not seen as anything but as being fair and impartial, thus not promoting one side over the other. So we have taken those steps in comments and in amendments to our rules.

Our workforce, of course, is incredibly important to us and we have undertaken an initiative called Building a Great Place to Work. A lot of that is based on Federal Viewpoint Survey results that we have received after administering that survey which, of

course, is administered in all the Federal agencies. That survey showed that we had some real strengths, but it also showed that we could improve in a number of areas.

The areas where we wanted to improve were wellness, work-life balance and internal communications, and we have taken steps in all of those areas to try to improve the quality of the life of our employees, because we understand that only by having motivated, well-positioned and also well-educated staff are we going to be able to meet the needs of the community we serve. So, we have taken the effort not only to address the needs of our employees through these programs, but through your auspices and your help we have been able to re-energize and actually automate and develop our Human Resources Division. We now can track applicant flow, so that we can hire the best people that are available and willing to work for us.

We also have managed to implement a web-based electronic personnel file that employees can access from their desktop, so they are more aware of what is in their personnel files. Employees know what is required of them through their MAPs, which I mentioned, and through their performance evaluations which are tied to our strategic plan, so there is a lot of continuity throughout the organization and a recognition of what we need to do to become an even better court system.

Infrastructure-wise we have renovated and retrofitted three buildings that were built in the 1930s to be effective courthouses in this century and hopefully for the next 20 to 30 years. I am not including the Historic Courthouse, the Court of Appeals, which, of course, was renovated a few years ago and is a model court building, I think, and one we are quite proud of. In addition to renovating those buildings, we have taken steps to move and consolidate Family Court operations within the Moultrie Courthouse, which is now our big priority.

We have a master facilities plan which we developed 10 years ago to project what our space needs would be. We have been faithful to that plan in terms of developing our space and our infrastructure. Now as we have received funding for both design and beginning of construction of new space, we are about to begin construction of an addition increasing the space of our main trial courthouse, the Moultrie Courthouse, which sits on C Street right across from the Newseum, in case that is helpful to you.

In addition, court security is a big issue for us because, as you know, there have been courthouse shootings across the country, Delaware most recently. We have U.S. Marshals that provide judicial security and criminal courtroom security, and they move prisoners. We have contractual employees, security personnel who are at our front doors. We have enhanced our access through an automatic card system that limits the places some of our employees can go and enhances their opportunity to make it to the areas where they are needed.

Through that process we have increased security and enhanced it, but we have had a recent study done by the Marshals Service and they have indicated that we have to do more. We need more contract court personnel because we have gone from the Moultrie

Courthouse as our primary courthouse back on to our campus with five buildings in Judiciary Square.

One of the key aspects of our strategic plan, the one we have just released, deals with the public's trust and confidence, very, very important to us. We have transparency as one our values. We have a number of values. But the public trust and confidence is also the ability to provide services for the citizens of District of Columbia while maintaining the public safety. We do that in a number of ways, most notably I think for your purposes because you have seen this as we have developed it, we have opened new community-based probation drop-in centers, we call them BARJ's. They are restorative justice centers to serve young men in three of four quadrants of the District of Columbia. Thanks to the support of Congress we are about to open our fourth, and this one is focusing on young girls and we think it is critical.

With respect to the impact of sequestration, I can tell you that it will have a tremendous negative impact on our operations. In the long term when we are looking at our strategic objectives, this sequestration, if it lasts too long and if our budgets stay flat or are cut more dramatically, in the long term it will affect our service to the public because we are such a personal services organization. We have 10,000 people a day who come through our doors. They come to our courthouses and make their case filings, to seek protective orders and receive services that are fundamental to our mission. For that reason, we need to make sure that our workforce stays robust. And as I said, we are doing what we can internally, but we will need some help. We have absorbed those reductions by hiring freezes, not filling positions, keeping vacancies, cutting contractual services in non-case processing ways.

With respect to our capital budget we are delaying contracts.

With respect to our CJA budget, our Criminal Justice Act budget, we have implemented staggered calendars, reduced attorney waiting time, and we have taken other measures such as, for appropriate cases, instituting sort of flat fee payments which don't necessarily capture all the time that the lawyers are putting in, but they are accepting of those payments for different stages of the litigation.

In conclusion, Mr. Chairman, the Courts remain dedicated to the fair administration of justice for the people who live, work, do business and visit the Nation's capital, and we are equally committed to being responsible stewards of the public's money.

Chief Judge Satterfield and I appreciate this opportunity to appear before you and look forward to answering any questions that you or the members of the subcommittee have for us. Thank you.

[The statement of Judge Washington follows:]

District of Columbia Courts
500 Indiana Avenue, N.W.
Washington, D.C. 20001

STATEMENT OF
ERIC T. WASHINGTON
CHAIR, JOINT COMMITTEE ON JUDICIAL ADMINISTRATION IN THE DISTRICT OF COLUMBIA AND
CHIEF JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
HOUSE APPROPRIATIONS COMMITTEE

MARCH 18, 2013

Good afternoon, Mr. Chairman, Ranking Member Serrano, and members of the Subcommittee. I am Eric T. Washington and I am here in my capacity as Chair of the Joint Committee on Judicial Administration in the District of Columbia, which is the policy-making body for the District of Columbia Courts. With me is Lee F. Satterfield, Chief Judge of the Superior Court of the District of Columbia. We thank you for having us here this afternoon and appreciate this opportunity, in the absence of a budget submission, to update you on key aspects of the work of the D.C. Courts.

Earlier this month the Courts introduced to our employees our third five-year strategic plan, entitled *Open to All, Trusted, by All, Justice for All*. This title is also our vision for serving the public in the District of Columbia. The Courts' strategic plan provides the framework for our budget submission, our court operations through division-level management action plans, called "MAPs," and our employee performance plans. All Court initiatives must support the goals and objectives of our strategic plan.

Enhancing Case Resolution in the Court of Appeals

In support of the Plan's first goal, Fair and Timely Case Resolution, the Court of Appeals has been working over several years to enhance the timely resolution of cases. According to statistics compiled by the National Center for State Courts, the D.C. Court of Appeals has the highest caseload per capita of any jurisdiction

and, despite our small population, the second highest number of case filings of any jurisdiction without an intermediate appellate court.

We appreciate the support of the President and Congress for a new case management system and additional judicial law clerks to help us in this effort to expedite case processing. The new technology helps the Court manage this large caseload and connect to the Superior Court case management system, from which we are now able to obtain the trial record electronically, which has increased efficiency. The Court has revised its internal operating procedures to function more efficiently. We are pleased to report that these efforts have begun to show results. The Court of Appeals has reduced its median time on appeal to 352 days, the lowest in several years, but more work remains to be done. In the Superior Court, the trial court, courtwide performance measures were adopted to address case processing activities, court operations, and performance. A multi-year business intelligence initiative was established to enhance performance analysis, reporting, and public accountability

Helping Litigants Without Lawyers

To support our second strategic goal, Access to Justice, the D.C. Courts host several self help centers for litigants without lawyers, in partnership with the D.C. Bar, the Legal Aid Society, local law firms, the city's law schools, and non-profit organizations. Not surprisingly, given the struggling economy, the number of people seeking assistance is growing. For example, our Family Court Self Help Center assisted more than 8,000 people in 2012, a 30% increase over 2009. Through these collaborations, the Courts provide part-time self help centers in a number of other subjects in which litigants frequently do not have the assistance of an attorney: domestic violence, consumer law, landlord tenant, small claims, tax sales, and probate. Through these centers, thousands of vulnerable citizens get free help with their legal matters.

In addition, we are very pleased with new judicial ethics rules that enhance access to justice for unrepresented litigants. Our new Code of Judicial Conduct, which became effective in January 2012, includes a provision on the judge's role. According to the Code, "judges should make reasonable accommodations" to help these litigants understand court proceedings and be heard. For example, the

judge may consider providing information about the proceedings, asking neutral questions, or explaining the basis for a ruling.

Building a Great Place to Work

A Strong Judiciary and Workforce, Goal 3 of the Strategic Plan, recognizes that the D.C. Courts' greatest asset is our staff. Following employee feedback on the Federal Viewpoint survey, the Courts sponsored wellness and work life balance initiatives and worked to improve internal communication. In addition, to promote the Courts' strategic goals of employee engagement and enhanced productivity and service to the public, the Courts are transforming the Human Resources Division from a reactive paper-processing operation into a strategic partner that will help lead the Courts in developing the workforce of the future. Again, we appreciate the support of Congress and the President for financing in FY 2012 two of four positions identified as critical to effect this conversion. The Courts have automated several human resources functions, including implementation of an automated applicant tracking system, that helps the Courts manage recruitment and hiring to ensure that the best candidates fill open positions, and a web-based electronic personnel file that employees can access from their desks.

Infrastructure

The fourth goal of our strategic plan, A Sound Infrastructure, requires that the Courts maintain adequate facilities, security, and technology for the administration of justice. The D.C. Courts occupy over 1.2 million square feet of space in Judiciary Square as well as leased space around the city for support functions and juvenile probation. The Courts' capital program over the past decade has been guided by our Facilities Master Plan, which identifies space requirements and lays out a plan to meet them. To date, we have moved administrative support functions to leased space; renovated three buildings constructed in the 1930's; relocated two major operating divisions, the Civil Division and the Family Court, as well as the Domestic Violence Unit within the Moultrie Courthouse; completed restoration of the Historic Courthouse for the Court of Appeals; renovated Arraignment Court; and completed the 6th Floor renovation of the Moultrie Courthouse. We are grateful to the Congress and the President for supporting these improvements.

Now the Courts' focus is on the Moultrie Courthouse, the primary home of our trial court. With your support, we are adding new space to the building and continuing to modernize the infrastructure and renovate worn and outdated spaces. Work is underway on the addition to the Moultrie Courthouse. The project will add 175,000 gross square feet of new and renovated space by expanding the building along its south side. This addition will permit the Courts to complete consolidation of Family Court and courthouse-based juvenile probation functions in one location in the courthouse, which will make it easier for the public to access these services. The additional space will also enable the Courts to return support functions from leased space to Judiciary Square. Construction will be particularly challenging as the court must continue to operate in the building. Funds were appropriated in fiscal 2010 to begin design and in fiscal 2012 to commence construction. We are scheduled to break ground later this year.

Maintenance of court facilities remains a herculean task, and one that is absolutely critical to protecting the substantial public investment represented by recent renovations. As new mechanical systems in our modernized buildings complete warranty periods, the Courts must continue preventive maintenance and make any needed repairs. The Moultrie Courthouse requires substantial maintenance, as many of its systems have reached the end of their expected life. The Courts will complete installation of a new roof next month, and the original adult holding facility is nearing the end of a major renovation to meet current health and safety, accessibility, and security standards.

The D.C. Courts are challenged each day to provide a safe environment for the public, as we have over 500 prisoners in the courthouse each day, nearly 10,000 visitors to our Judiciary Square facilities, and we conduct court proceedings in five different buildings and provide probation services throughout the District. Incidents in courthouses around the nation emphasize the need for enhanced security. The U.S. Marshals Service manages prisoners, ensures judicial safety, and secures criminal courtrooms. Contractual security officers secure building entrances, corridors, and some additional courtrooms. Regular security assessments conducted by the Marshals Service identify areas that require additional attention. A recent assessment identified the need for additional contractual security officers to meet the Courts' security requirements. The Courts have reconfigured building entrances and recently upgraded security

screening equipment and our access control system, which permits an employee's ID badge to open certain courthouse doors. The Courts' Continuity of Operations Plan provides for the administration of justice in the event of an emergency.

Juvenile Probation

The Superior Court provides juvenile probation supervision in the District of Columbia, supporting Strategic Goal 5, Public Trust and Confidence. The Court examines best practices and data to implement innovative programs to promote public safety and rehabilitation. Building on existing probation reporting centers, the Court has opened new community-based probation Drop-In Centers to serve young men in three of the four quadrants of the District. Thanks to the support of Congress and the President, the Court is preparing to open an additional center for young women. Youth who might otherwise need to be in a secure facility report to the Drop-In Centers after school and on Saturdays for tutoring, counseling, vocational training, and community service. The Drop-In Centers show promising results in protecting public safety and rehabilitating juveniles under court supervision. We are proud to report that the average recidivism rate is 10% among juveniles supervised at the first center we opened (in 2008), and is 9% at the second center (opened in 2011), compared to the national recidivism rate of 25%.

Impact of the Sequestration

The budget reductions required by the sequestration will negatively impact the achievement of our strategic objectives and, in the long term, our service to the public. Despite having a substantial number of vacancies in our workforce, the Courts implemented a hiring freeze to reduce personnel costs. To meet the Courts' short-term workforce needs, we have instituted cross training of court employees. However, in the long term, with 10,000 people visiting the D.C. Courts in person each day, adequate staffing levels are critical to the timely administration of justice and the provision of quality services to the public we serve. Adequate staffing levels are also necessary to maintain a strong judiciary and workforce. In addition to the savings achieved through the hiring freeze, the Courts have also reduced or terminated contractual services that do not impact case processing, like rodent control and building maintenance, but that do jeopardize the physical environment for the public and court staff. In addition,

reductions to the Courts' capital budget will delay projects that fulfill the Courts' strategic goal to provide a sound infrastructure for the administration of justice, and such delays will undoubtedly result in increased long-term costs. Finally, we have taken steps to control the costs associated with the representation of indigent criminal defendants in the District of Columbia by instituting new case calendaring plans to increase case processing efficiency and reduce attorney waiting time and by establishing flat fee arrangements for appropriate types of representations.

Conclusion

Mr. Chairman, Ranking Member Serrano, the District of Columbia Courts are dedicated to the fair administration of justice for the people of our Nation's Capital and are committed to responsible stewardship of the public's funds as we strive to realize our vision of a court system that is open to all, trusted by all, with justice for all. I thank you for this opportunity to address the Subcommittee. Chief Judge Satterfield and I would be happy to answer any questions you may have.

THE HONORABLE ERIC T. WASHINGTON, CHIEF JUDGE
DISTRICT OF COLUMBIA COURT OF APPEALS

The District of Columbia Judicial Nominations Commission designated the Honorable Eric T. Washington to serve a four-year term as Chief Judge of the District of Columbia Court of Appeals beginning on August 6, 2005. His term as Chief Judge was renewed for a second four year term August 2009.

Chief Judge Eric T. Washington was sworn in as an Associate Judge of the District of Columbia Court of Appeals on July 1, 1999. Since his appointment, he has heard and decided hundreds of appeals from the Superior Court and District of Columbia Administrative agencies. He previously served as co-chair of the Strategic Planning Leadership Council for the District of Columbia Courts, and as a member of the Standing Committee on Fairness and Access to the Courts as well as the Access to Justice Commission.

Chief Judge Washington is a 1976 graduate of Tufts University. He received his law degree from the Columbia University School of Law in 1979. He was admitted to the State Bar of Texas in 1979 and the District of Columbia Bar in 1985. He is also admitted to practice in the United States Supreme Court, the United States District Court for the District of Columbia, the United States Court of Appeals for the D.C. Circuit, the Fifth Circuit and the Eleventh Circuit. In 1979, Chief Judge Washington began his legal career as an associate attorney with the law firm of Fulbright & Jaworski in Houston, Texas. He was engaged in a general labor and employment practice which included handling unfair labor practice cases before the National Labor Relations Board and fair employment cases before the Equal Employment Opportunity Commission as well as various state and federal courts.

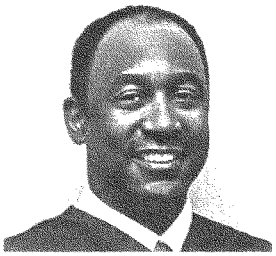
In 1983, Chief Judge Washington relocated to Washington, D.C. to serve as Legislative Director and Counsel to U.S. Congressman Michael A. Andrews of Texas. He subsequently rejoined Fulbright & Jaworski in Washington, D.C., where he resumed a general administrative litigation practice. From 1987 through 1989, Judge Washington served first as Special Counsel to the Corporation Counsel (now called the Office of the Attorney General for the District of Columbia) and later as Principal Deputy Corporation Counsel for the District of Columbia, where he was responsible, along with the Corporation Counsel, for providing all legal services to the Government of the District of Columbia.

From January 1990 to May 1995, Chief Judge Washington was a partner in the law firm of Hogan & Hartson where his practice included a broad range of administrative law and civil litigation matters. Judge Washington left Hogan & Hartson in 1995 when he was appointed to the Superior Court of the District of Columbia as an Associate Judge. During his tenure on the Superior Court, Judge Washington presided over more than one hundred criminal trials as well as cases in both the Drug Court and the Court's Domestic Violence Unit. In addition, Judge Washington handled tax and probate matters on certification from other judges and was

responsible for more than one hundred cases involving children who were victims of abuse and neglect.

Chief Judge Washington has been active in many professional, civic and charitable organizations. He has served on several committees of the District of Columbia Bar, including the Criminal Justice Act/Counsel for Child Abuse and Neglect Committee, the Standing Committee on the Federal Judiciary, and the Bar's Nominating Committee. He also served as a member of the Steering Committee for the D.C. Affairs Sections of the Bar. Judge Washington presently serves on the Board of Directors for the Boys and Girls Clubs of Greater Washington and the Board of Directors for the Boys and Girls Clubs Foundation. He formerly served on the Board of Directors for the Einstein Institute for Science, Health and the Courts and currently serves on the Board of Directors of ASTAR, the Advanced Science and Technology Adjudication Resource Project.

THE HONORABLE LEE F. SATTERFIELD
CHIEF JUDGE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA



In November 1992, President George Bush appointed Judge Satterfield to the Superior Court of the District of Columbia. He was sworn-in as Chief Judge on September 24, 2008. Judge Satterfield was born in the District of Columbia. He graduated from St. John's College High School in 1976 and from the University of Maryland in 1980 with a Bachelor of Arts in Economics. He received his Juris Doctor from the George Washington University National Law Center in 1983. After law school, Judge Satterfield worked as a judicial law clerk to the Honorable Paul R. Webber, III, who was an Associate Judge of the Superior Court of the District of Columbia. In 1984, he was appointed an Assistant United States Attorney for the District of Columbia. In that position, he served in the appellate, grand jury, misdemeanor and felony sections of the United States Attorney's Office. At the time he left the United States Attorney's Office, he was prosecuting homicide and sex offense cases.

In September 1988, Judge Satterfield joined the law firm of Sachs, Greenebaum and Tayler. While in private practice, he handled both civil and criminal matters in Superior Court and in the federal courts of Virginia, Maryland and Alabama. In 1991, he left private practice and returned to the United States Department of Justice as a trial attorney in the Organized Crime and Racketeering Section. In that section, he prosecuted organized crime and labor racketeering crimes in the federal courts of the District of Columbia, Pennsylvania, and Illinois.

After he was appointed to the bench in 1992, Judge Satterfield served in the Criminal, Civil and Family Divisions, and the Domestic Violence Unit. In 1994, while serving in the Criminal Division, Judge Satterfield was one of the Court's first Drug Court judges. Between January 1998 and December 1999, Judge Satterfield served as Presiding Judge of the Domestic Violence Unit. The Domestic Violence Unit was established in 1996 and handles criminal, intrafamily and domestic relations cases involving domestic violence. During this time, Judge Satterfield served as a member of a National Advisory Committee on Domestic Violence, which developed model guidelines for the creation and operation of domestic violence courts.

In October 2001, Judge Satterfield was designated Presiding Judge of the Court's Family Division. After the enactment of the District of Columbia Family Court Act in January 2002, Judge Satterfield was designated Presiding Judge of the Family Court, a position he held until December 2005. In this capacity, Judge Satterfield handled the administrative functions of the Family Court, which included chairing the Family Court Management and Oversight Committee, the Family Court Implementation Committee, and the Family Court Advisory Rules Committee. Judge Satterfield served on several mayoral committees addressing issues related to mental health, child welfare, and juvenile justice. He served as Vice Chairperson of the District of Columbia Juvenile Justice Reform Task Force and as Co-Chair of the Juvenile Detention

Alternative Initiative Committee and the Citywide Truancy Task Force, which launched a Middle School Truancy Court Diversion Program in a District of Columbia Public School in the fall of 2005.

Judge Satterfield is a member of the Joint Committee on Judicial Administration, which is the policy-making body of the D.C. Courts. He was a member of the Superior Court's Strategic Planning Leadership Council, the Superior Court Rules Committee, the Judicial Education Committee, and the Committee on the Selection and Tenure of Magistrate Judges. Judge Satterfield was a member of the Board of Trustees of the National Council of Juvenile and Family Court Judges. He is currently on the Board of Trustees of the National Conference of Metropolitan Courts and the Board of Directors of the Advanced Science & Technology Adjudication Resource Center. He is also a member of the National Judicial Institute on Domestic Violence's Steering Committee and serves on the faculty of the NJIDV, which conducts educational programs for judges on domestic violence matters.

Since 1991, Judge Satterfield has been an adjunct professor at the Catholic University Columbus School of Law where he taught Criminal Trial Practice and Advanced Criminal Procedure. He was a professorial lecturer in the L.L.M. litigation program at the George Washington University National Law Center for four years.

Mr. CRENSHAW. Thank you very much, Judge. I now turn to Director Ware.

Ms. WARE. Good afternoon, Chairman Crenshaw, Congressman Womack, Ranking Member Serrano, Congressman Quigley and other members of the subcommittee. I am pleased to appear before you today to discuss the Court Services and Offender's Supervision Agency, better known as CSOSA, which includes the Community Supervision Program, and you will hear me refer to it as CSP, and Pretrial Services Agency, PSA, for the District of Columbia.

Since fiscal year 2010, CSOSA's overall budget has remained essentially flat while costs to operate our supervision and public safety programs have continued to rise, effectively reducing our budget every year for the past 3 years. In fiscal year 2010, CSOSA, including both CSP and Pretrial, received an aggregate appropriation of $212.9 million. Of that amount, $153.5 million was designated for the Community Supervision Program and $59.4 million for Pretrial Services. Currently, CSOSA is operating under a continuing resolution that sets our funding at the fiscal year 2012 enacted level.

The recent sequestration order that went into effect on March 1st, 2013, resulted in nearly $11 million being cut from CSOSA's budget which, as I mentioned, had already been frozen at the fiscal year 2012 level. As of September 30, 2012, CSP supervised a total of 15,599 offenders on any given day, and over the course of the fiscal year, as you mentioned, we are responsible for the supervision of 24,000 different offenders, many of whom face significant challenges.

Those with special needs, which comprise approximately 32 percent of our total offender population, are supervised by specialized supervision units, including mental health, sex offender and domestic violence supervision teams. These characteristics guide us in determining the appropriate intervention and supervision strategies needed to improve their chances of successfully completing supervision and becoming productive members of the community. However, I must underscore that recent funding cuts and continual budget uncertainty pose significant risk to the success that our agency has previously achieved.

The Community Supervision Program's updated fiscal year 2013 sequester funding basis is $145 million, which is approximately $7.7 million less than our 2012 enacted funding level of $153 million. CSP intends to continue targeting these reduced resources towards the highest risk and highest need offenders under our supervision through evidence-based programs and through any supports that we can provide them. However, CSOSA is a small agency and therefore does not have the funds available in general areas such as training, travel, employee awards, administration and information technology with which to absorb this level of reduction.

CSP will now have to cancel and/or reduce contracts for offender treatment, housing and other reentry services by an additional $3 million and implement a hiring freeze and furlough all of our employees for a total of 6 workdays. Such reductions are certain to have a significant and possibly immediate ripple effect on area public safety and our D.C. law enforcement partners.

In conducting our public safety oriented mission, CSP employs four operational strategies: Effective offender risk and needs as-

sessment, close supervision, treatment and support services, and partnerships. Even in light of our budgetary challenges, CSP recognizes the importance of implementing several program initiatives in response to emerging criminal justice trends such as the changes in offender population demographics and the proliferation of synthetic drugs, which you may have heard of. These new programming initiatives are being accomplished through reallocation and consolidation of existing resources and in accordance with our updated fiscal year 2011 through 2016 strategic plan.

It is also important to note that CSP is proud of the various mission-related accomplishments and advancements we were able to achieve in recent years through collaboration with our area criminal justice and law enforcement partners, nonprofits, faith-based institutions, social service providers and employers.

I will now turn to the Pretrial Services Agency for the District of Columbia. Similarly, the Pretrial Services Agency has initiated several steps in fiscal year 2013 to absorb the impact of the continuing resolution and sequestration. These include reducing its contracted drug treatment services, imposing a limited hiring freeze and making reductions in information technology, training and forensic laboratory expenses. PSA also plans to furlough employees a total of 6 workdays beginning in April.

The Pretrial Services Agency provides effective assessment and placement into clinically appropriate sanctioned based treatment programs for substance abusing and addicted defendants to enhance community safety and achieve cost savings through community-based supervision in lieu of incarceration. In fiscal year 2012, the Pretrial Services Agency placed nearly 900 defendants in sanction-based residential and outpatient services. Pretrial also successfully implemented several research based improvements to the Drug Court and the agencies' in-house treatment program. These improvements are designed to enhance the quality of clinical services and to align them more fully with evidence-based treatment practices.

Many criminal defendants have mental health issues severe enough to affect their ability to appear in court and to remain arrest-free. In 2012, the Pretrial Services Agency managed 2,600 such defendants in its specialized supervision unit, better known as SSU. SSU provides close supervision of defendants and makes referrals to community-based mental health services. Most of these defendants also need substance abuse treatment. Our specialized supervision unit arranges for these services once the mental health condition is stabilized.

Drug testing services are integral to the judicial process and to public safety in the District of Columbia. The Pretrial Services Agency Office of Forensic Toxicology Services processes urine specimens for CSOSA and Pretrial and tracks drug abuse trends within the local defendant and offender populations. In fiscal year 2012, the Office of Forensic Toxicology conducted 3 million drug tests on 478,000 samples from persons on pretrial release, probation, parole and supervised release as well as for juveniles and adults with matters pending in the D.C. Family Court.

In closing, while CSP and Pretrial have made great strides in providing comprehensive supervision services and treatment for of-

fenders and defendants in Washington, D.C., recent reductions in resources and ongoing budget uncertainty present a host of challenges for the agency and it also threatens our ability to continue realizing these successes.

Thank you for the opportunity to share my testimony, and I would be pleased to answer any questions that you may have.

[The statement of Ms. Ware follows:]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

TESTIMONY

SUBMITTED TO THE

US HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL SERVICES
AND GENERAL GOVERNMENT

MARCH 18, 2013

Good afternoon Chairman Crenshaw, Ranking Member Serrano and members of the Subcommittee:

I am pleased to appear before you today to discuss the operations, financial condition, and performance of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA), which includes the Pretrial Services Agency for the District of Columbia (PSA). CSOSA is a relatively young organization. Originally established by the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act), CSOSA was certified as an independent Executive Branch Agency of the U.S. government on August 4, 2000.

With enactment of the Revitalization Act, and the subsequent creation of CSOSA, the Federal government took on a unique, front-line role in public safety in the District of Columbia. The mission of CSOSA is to enhance public safety, prevent crime, reduce recidivism and support the fair administration of justice in close collaboration with the community. CSOSA's Community Supervison Program (CSP) supervises sentenced adult offenders in the community on probation, parole, or supervised release. PSA supervises and monitors pretrial defendants in the US District Court for the District of Columbia and the Superior Court of the District of Columbia.

In FY 2012, CSOSA, including both CSP and PSA, received an aggregate appropriation of $212.9 million. Of that amount, $153.5 million was designated for the Community Supervision Program and $59.4 million for PSA. Since FY 2010, CSOSA's overall budget has remained essentially flat, while costs to operate our supervision and public safety programs have continued to rise. As a result of almost three years of effective budget reductions, both CSP and PSA have already been forced to reduce valuable offender and defendant supervision and support programming, which in turn harms our ability to meet the needs of this vulnerable population and to ultimately improve public safety in the District of Columbia.

Currently, CSOSA is operating under a Continuing Resolution that set our funding at FY 2012 enacted levels. In addition, the recent Sequestration Order that went into effect on March 1, 2013 resulted in a roughly $11 million cut in CSOSA's budgetary resources below FY 2012 enacted levels. CSOSA now has only a little over six months with which to absorb this 5 percent reduction in funding. This translates into further reductions in critical offender treatment, transitional housing services, employment assistance, and other key programs that would be used to carry out our core public safety mission. Additionally, the Sequestration Order will impact our most significant assets, which are our employees. CSOSA will now have to furlough staff, including critical law enforcement officers, for a total of six workdays beginning in May. Despite these reductions, both CSP and PSA remain committed to effectively performing our front-line public safety functions here in the District of Columbia by implementing innovative and evidence based supervision strategies and realigning existing resources to focus on our higher risk and specialized populations.

That said, I would like to begin by addressing the present operational and financial condition of the Community Supervision Program (CSP). Later in my testimony I will discuss the operational and financial status of the Pretrial Services Agency.

The Community Supervision Program's updated FY 2013 Sequester funding basis is $145,871,000, which is approximately $7.7 million less than our FY 2012 enacted funding level of $153.5 million. CSP intends to continue targeting these reduced resources towards the highest risk and highest need offenders under our supervision through evidence based programs and support. However, CSOSA is a small agency and therefore does not have the funds available in general areas such as training, travel, employee awards, administration and information technology with which to absorb this level of reduction. Further, other organizations within the District of Columbia, such as the DC City Government, simply do not have the level of resources to provide the services required to meet the needs of our offender population.

In order to operate within the Sequester funding basis, CSP must make additional cuts to our critical public safety and offender support programs. For example, following the issuance of the recent Sequestration Order, CSP will now have to cancel and/or reduce contracts for offender treatment, housing, and other reentry services by an additional $3 million and implement a hiring freeze and furlough all employees for a total of six workdays. Such reductions are certain to have a significant and possibly immediate impact on area public safety and our law enforcement partners within the District of Columbia.

As you are aware, CSP is charged with supervising adult parolees and supervised releasees returning to the District of Columbia from the Federal Bureau of Prisons as well as adult probationers sentenced by the D.C. Superior Court. CSP adult parolees are typically under our supervision for 7 to 11 years; supervised releasees for an average of three years and probationers for approximately two years.

In FY 2012, CSP supervised approximately 15,500 adult offenders on any given day and over 24,000 different offenders over the course of a year. On average, CSOSA supervises approximately one in every 41 adult residents of the District of Columbia. Offenders entering our supervision in FY 2012 faced the following challenges: 84 percent had a self-reported history of substance abuse; 76 percent reported being unemployed at the time of intake; 41 percent had less than a high school diploma or GED; 37 percent had diagnosed or self-reported mental health needs, 7 percent had sex offenses in their criminal arrest history, and 9 percent had unstable housing (most living in homeless shelters). Roughly 84 percent of CSP's offender clientele are male, while 16 percent are female. Comparable to nationwide trends, many of our offenders are a high risk to public safety, have significant needs and are prone to recidivate. In FY 2012 over 37 percent of our offender population was assessed, classified and supervised at the highest risk levels (maximum and intensive).These charateristics guide us in determining the appropriate interventions and supervision strategies that will help stablize this population and reduce recidivism. Our innovation and investments in supervision and targeted

programming have paid off. However, I must underscore that recent cuts and continual budget uncertainty potentially comprimises the successes our Agency has previously achieved.

In order to improve public saftey in the District of Columbia, our agency has established two long-term performance outcomes: decreasing recidivism among the supervised offender population and successful completion of supervision. CSP's public safety and offender support programs have resulted in reductions in recidivism amongst our offender population. Moreover, in FY 2012, 63 percent of cases were discharged from supervision successfully, compared to 62 percent in FY 2011. A higher percentage of probation cases discharged successfully (70 percent), compared to parole/supervised release cases (42 percent).

While CSP is proud of these accomplishments, we remain concerned that recent reductions in budgetary resources will present challenges in the future as it relates to our performance outcomes. CSP budget reductions have a rippling effect on our law enforcement partners, notably the Federal Bureau of Prisons and the DC Government. Despite our existing budgetary challenges, CSP remains committed to performing its due diligence as it relates to continuing to track both our offender recidivism rates and our supervision completion rates.

To accomplish our performance outcomes, CSP employs four mission-oriented operational strategies: effective offender risk and needs assessment; close supervision; treatment services and intervention support; and partnerships.

Key to effective community supervision is the offender assessment process. Approximately 9,500 offenders enter our supervision each year. The Community Supervision Program has developed a comprehensive risk assessment instrument, the AUTO Screener, which classifies each offender's risk to the community and identifies specific needs that should be met with timely supervision interventions. The AUTO Screener captures information about the strength of an offender's

community and social support, criminal history, substance abuse history, mental health, attitude and motivation, and other areas bearing on the likelihood of future criminal activity as well as identified behavioral health needs that, once addressed, can mitigate potential law violation. Offenders are periodically reassessed and regularly drug tested to determine changes in their assessed risk levels.

The Community Supervision Program's close supervision strategies include direct offender supervision performed by highly skilled Community Supervision Officers (CSOs) located in Agency field units throughout the District. The strategic placement of Agency field units in neighborhoods where our offenders live and work is a linchpin of CSP's community supervision approach. Community oriented supervision allows our CSOs to maintain an active, visible community presence, collaborating with neighborhood law enforcement officers throughout the city's seven Police Districts, as well as spend more time conducting visits of offender's homes and work sites. Our community presence enables effective partnerships not only with the Metropolitan Police Department and the US Attorney's office, but also with local social services providers, non-profit and faith-based institutions, and employers.

Recent reductions, however, in budgetary resources due to the March 1st Sequestration Order present significant concerns as it relates to CSP's current efforts to relocate our offender supervision field unit, located at 25 K Street, NE, Washington D.C. This offender supervision field unit houses approximately 90 agency staff performing direct offender supervision, substance abuse collection and vocational/educational training for approximately 3,100 offenders. 25 K Street, NW, also serves as the location for most of our female-specific and interstate offender supervision programs. CSOSA's lease for this location is expected to end by March 1, 2014.

As a result, GSA and CSOSA have initiated a space acquisition project. While CSP must fund the relocation of this unit in FY 2013 to ensure an orderly transition to

new space procured by GSA in early 2014, recent budget cuts now jeopardize completion of this important project. A request for inclusion of this funding anomaly in the final FY 2013 Continuing Resolution was forwarded to Congress in February by the Administration on behalf of CSP. Failure to fund this project in FY 2013 will place the Agency at risk for potential supervision disruptions and significant staff displacement.

Lower caseloads are another key element of our close supervision strategy. Prior to CSOSA's creation, supervision caseloads in the District exceeded 100 offenders per Officer, far higher than recognized national standards. Presently, our general supervision caseload ratio averages 57 offenders per CSO, which is slightly above the the 50 cases-per-officer level recommended by the American Probation and Parole Association for supervising moderate to high risk cases. Higher-risk offenders, such as those whose cases involve mental health treatment, domestic violence or sex offenses are managed under specialized caseloads as follows:

- Mental Health - 56:1
- Domestic Violence - 49:1
- Sex Offenders 35:1

While past resources have enabled CSP to reduce CSO caseloads to levels at or near national supervision standards, current budgetary challenges require CSP to explore new strategies and innovative approaches to maintain CSO caseloads at levels appropriate to preserve public safety in the Nation's Capital. For instance, CSP is currently realigning supervision officer resources using a proprietary workload algorithm based on offender case type, case status, assessed risk level, number of days on supervision, and number of days remaining on supervision to ensure appropriate supervision caseload levels. This re-allocation of existing supervision officer resources will take place in mid-2013 and allow for more differentiated responses, such as kiosk reporting for low risk offenders and GPS monitoring for high risk offenders.

A critical component of close supervision is the swift imposition of appropriate, graduated sanctions for non-compliant behavior. Research tells us that timely intervention, appropriate reinforcements and consistent sanctions are critical to effective community supervision. From its inception, the Agency has worked closely with both DC Superior Court and the US Parole Commission to develop a range of options that CSOs can implement immediately, prior to requesting that offenders be sanctioned by the releasing authority. The Community Supervision Program uses a variety of offender interventions and sanctions including enhanced contact, increased drug testing, placement on Global Positioning System (GPS) monitoring, assignment to our Re-entry and Sanctions Center, placement into the Secure Residential Treatment Program or assignment to our Day Reporting Center (DRC). The DRC is an on-site cognitive restructuring program designed to change offenders' adverse thinking patterns, provide education and job training to enable long-term employment, and hold unemployed offenders accountable during the day. CSP would like to expand use of the DRC concept in the coming years to complement other data driven and evidence based supervision practices employed by the Agency. However, recent reductions in our budgetary resources may prevent us from doing so.

In addition to the use of sanctions and interventions for non-compliant behavior, CSP also anticipates an increase in the use of incentives, such as kiosk reporting or requests for early termination of supervision, for those offenders that consistently demonstrate positive performance and behavior.

Treatment and support services are provided to offenders based on the results of needs assessments and drug testing. For example, CSOSA's Re-Entry and Sanctions Center (RSC) provides high-risk offenders and defendants with intensive assessment and reintegration programming in a residential setting. The RSC program is specifically tailored for offenders/ defendants with long histories of crime and substance abuse coupled with repeated periods of incarceration and little

outside support. CSOSA opened the RSC facility in February 2006. From February 2006 through September 30, 2012, the RSC admitted 6,130 high-risk offenders/defendants into its 28-day assessment and treatment readiness program. Eighty percent or 4,884 offenders/defendants have successfully completed this program

Additionally, the Agency provides contract substance abuse and sex offender treatment, contract transitional housing, and education and employment-related services. We also refer offenders to community-based organizations for services that are not provided directly by the Agency, including certain substance abuse and mental health treatment, healthcare, vocational training and job placement.

As CSP continues to grapple with the challenge of doing more with fewer resources, we find ourselves unable to meet their treatment needs and having to refer more of our offenders to our local government and nonprofit partners, to access important services and treatment interventions. Unfortunately, like CSP, many of these entities are also inadequately funded to fully meet our clients' needs.

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Finally, effective partnerships and information sharing with other criminal justice agencies and community organizations is critical to the Agency's success. The Community Supervision Program works closely with the DC Metropolitan Police Department (MPD) to perform joint offender home visits and share offender arrest and GPS data. We work with our faith community partners to maintain a city-wide network of faith-based services, including offender mentoring, job coaching and transitional housing. Additionally, CSOSA, including both CSP and PSA, is a permanent member of the Criminal Justice Coordinating Council (CJCC) for the District of Columbia, which serves as a valuable forum for information sharing and collaboration among the various criminal justice entities in the District of Columbia to improve public safety and reduce crime.

In September 2009, CSP joined with the DC Department of Corrections (DC DOC), the United States Parole Commission (USPC), and the Federal Bureau of Prisons to implement the Secure Residential Treatment Program (SRTP) Pilot. The SRTP provides an alternative placement for DC Code offenders on parole or supervised release who face a revocation hearing due to illegal drug use, other technical and, in some cases, new criminal charges.

Critical to our success in the past has been our ability to keep pace with the dynamic nature of Criminal Justice trends. Given changes in our offender population and the need to manage our resources even more efficiently, CSP is currently reallocating existing resources to focus on our highest risk and highest need offenders.

For instance, over the last two years we have reallocated resources to increase specialized supervision and programming for our female and mental health offenders. CSP continues to expand the scope of our women's programming in response to the steady growth in number of female offenders with supervision obligations and the increasing rate of women offenders with co-occurring substance abuse and mental health issues. Between 2007 and 2012, the number of women on our daily caseload has increased by 8 percent, or approximately 200 women, each year. Approximately 50 percent of the female offenders we supervise consistently report having been evaluated, diagnosed or treated for a mental health issue. In November 2010, CSP converted one 15-bed unit of the Re-entry and Sanctions Center to serve female offenders with co-occurring substance abuse and mental health issues. We also designated three offender supervision teams to supervise women only

In addition, using this same resource reallocation approach CSP will soon pilot its new Young Adult Supervision Initiative. Currently, approximately 18 percent of CSP's total offender population is under the age of 25; with the number of young adult offenders increasing by 4 percent since FY 2010. Research has shown us that young adult offenders, generally between the ages of 18-25, pose a higher risk for

reoffending/re-arrest, are less likely to have a high school diploma or GED, and, overall, are less compliant with supervision requirements and more likely to have negative supervision outcomes. As part of our effort to shift more resources towards supervising higher risk offenders in accordance with our strategic plan, CSP plans on further expanding the use of a kiosk-based reporting model for our lowest-risk offenders. Supervision kiosks are automated machines, similar to ATM machines, to which fully and consistently compliant low-risk offenders report instead of reporting in person to a supervision officer. Offenders report once per month and update information pertaining to their housing, employment and collateral contacts. Kiosks are also programmed to instruct the offender to report for random drug testing. Kiosk reporting allows our CSOs to allocate more time to higher-risk offenders who need more intensive interventions and monitoring. It also serves as a powerful enticement for low-risk offenders to maintain long-term compliance with their supervision conditions.

Over 100 offenders (minimum assessed supervision level cases) currently report regularly to supervision kiosks located at our 25 K Street, 1230 Taylor Street, 300 Indiana Avenue and 3850 South Capitol Street field units. CSP plans to increase the number of low-risk offenders placed on kiosk supervision reporting in FY 2013. Both the kiosk program and the Young Adult Supervision Pilot are being accomplished by realigning existing CSP programs and resources.

Additionally, CSP remains on the forefront in the use of Global Positioning System (GPS) monitoring to supervise higher risk offenders, enhance public safety, maximize limited resources and provide critical information and data to other local and regional law enforcement partners. In FY 2012, approximately 600 high-risk offenders were on GPS Electronic Monitoring on any given day and 1,887 different offenders were placed on GPS at some point during the fiscal year. Another notable GPS related accomplishment achieved by CSP in FY 2012 involved training 1,201

staff from 18 other law enforcement agencies on the use of CSP's GPS offender tracking data.

Lastly, CSP is proud of the various mission related accomplishments and advancements that we were able to achieve in recent years through collaboration with our local and regional partners. For instance, CSP has placed a priority on enhancing data and information sharing efforts with such partners as the United States Parole Commission, the DC Metropolitan Police Department, and the US Attorney's Office. One particular local law enforcement data sharing activity that I would like to highlight is the GunStat initiative. Since the beginning of FY 2010, CSP has participated in GunStat, which is a monthly collaborative information sharing session designed to track gun cases from arrest to prosecution. GunStat allows CSP, PSA and other DC law enforcement partners to identify repeat offenders, follow trends, and develop interagency law enforcement strategies that will help prevent gun-related crimes or reduce the likelihood of repeat gun-related offenses in DC.

In addition to the GunStat initiative, CSP also works closely with the US Marshals Service and the DC Metropolitan Police Department to execute warrants for offenders under CSP supervision who are in violation of their terms of supervision. In an effort to streamline our warrant-related activities, in FY 2011CSP established a separate Warrant Team to supervise/investigate warrant cases that have been in a warrant status for more than 90 days. As a result, the number of our offenders in warrant status decreased 22 percent between September 2010 and September 2012.

Over the past couple of years, CSP has also worked closely with both of our releasing authorities, the United States Parole Commission (USPC) and the DC Superior Court, in establishing specialized mental health dockets and community courts. As mentioned earlier, nearly 40 percent of offenders under CSP's supervision have diagnosed or self-reported mental health issues.

The Mid-Atlantic Regional Information Sharing Initiative (MARIS) will make inter-state justice information sharing (JIS) a secure, effective, efficient, simple and practical process for each Member state. The Northeast states that have been involved in planning this initiative include: the District of Columbia, Delaware, New Jersey, West Virginia, Pennsylvania, New York, Maryland and Virginia. It is expected that other states will join once the governance structure and policies are implemented. The National Criminal Justice Association has been guiding the effort.

Finally, CSP is one of eight local law enforcement partner agencies that participate in the CJCC's Justice Information System (JUSTIS), which is a web-based application tool that provides partner entities access to criminal justice related information from multiple sources at the same time. A key aspect of JUSTIS is that it relies entirely on the voluntary sharing of information from the various contributing public safety partners, which helps to make it a cost effective and useful resource for exchanging adult criminal case information from arrest through prosecution and post-conviction release.

I will now turn to discussing the operations and finances of the Pretrial Services Agency. PSA has three strategic outcomes: to minimize future misconduct to help assure public safety; to reduce failures to appear for scheduled court appearances to promote the efficient administration of justice; and to maximize the number of defendants who stay on pretrial supervision to encourage defendant accountability. At the present time, PSA, like CSP, is operating under both the FY 2013 Continuing Resolution and the March 1, 2013 Sequestration Order. Consequently, PSA's budget has been reduced by nearly $3 million from $59.5 million in FY 2012 to its current level of $56.5 million.

PSA has initiated several steps in FY 2013 to absorb the impacts of the continuing resolution and sequestration. Over 85 percent of PSA's budget is allocated to salaries, expenses and other fixed costs, and we lack the financial elasticity present in larger agencies. To make the required cuts, PSA reduced its contracted drug

treatment services by 50 percent, imposed a limited hiring freeze and made sharp reductions in information technology, training and forensic laboratory expenses. Unfortunately, even after making these reductions, PSA must still furlough employees a total of six workdays. PSA worked closely with its labor union to determine the best approach to implementing the furloughs, which are scheduled to commence in April.

Despite these measures, we hope to sustain performance at levels similar to those seen during FY 2012. PSA achieved several milestones last fiscal year that showcase its commitment to results-driven performance. We will maintain our commitment to focus on improving identification and supervision of defendants who present a higher level of risk and/or a higher level of need, emphasizing innovative supervision strategies and technologies to reduce future criminality.

PSA conducts a risk assessment for each arrested person prior to first appearance in court to help judicial officers make informed and effective release or detention decisions. In FY 2012, PSA staff prepared over 13,600 pretrial reports for initial court appearance with recommendations for release or detention and almost 1,500 updated pretrial service reports for defendants who were held for a preliminary/detention hearing following their initial appearance. PSA also partnered with the D.C. Metropolitan Police Department to identify over 11,000 misdemeanor arrestees who were released safely from police custody pending their initial appearance in court.

PSA provides effective supervision of defendants, consistent with release conditions, to minimize the likelihood of criminal activity during the pretrial period and to assure future court appearances. In FY 2012, PSA supervised nearly 17,000 defendants in about 25,000 cases from the D.C. Superior Court and the United States District Court for the District of Columbia. PSA also placed almost 1,300 higher risk defendants on electronic surveillance, using hybrid global positioning surveillance and electronic monitoring technology.

PSA provides effective assessment and placement into clinically appropriate sanctions-based treatment programs for substance-abusing and addicted defendants to enhance community safety and achieve cost savings through community-based supervision in lieu of incarceration. In FY 2012, PSA placed nearly 900 defendants in sanctions-based residential, intensive outpatient, and outpatient services. PSA also successfully implemented several research-based improvements to the Drug Court and the Agency's in-house treatment program, designed to enhance the quality of clinical services and to align them more fully with evidence-based treatment practices.

Many criminal defendants have mental health problems severe enough to affect their ability to appear in court and to remain arrest-free. In FY 2012, PSA managed 2,600 such defendants in its Specialized Supervision Unit. This unit provides close supervision of defendants and makes referrals to community-based mental health services. Most defendants supervised by this specialized unit also need substance abuse treatment, and PSA arranges for these services once the mental health condition is stabilized.

Drug testing services are integral to the judicial process and to public safety in the District of Columbia. PSA's Office of Forensic Toxicology Services, its drug testing laboratory, processes urine specimens for PSA and CSOSA and tracks drug abuse trends within the local defendant and offender populations. In FY 2012, PSA's lab conducted over 3 million drug tests on almost a half million samples of persons on pretrial release, probation, parole, and supervised release, as well as for juveniles and adults with matters pending in the D.C. Family Court.

Several milestones showcase PSA's commitment to results-driven performance. These included external research assessments of Drug Court and its internal intensive outpatient treatment program, validation of its risk assessment procedures, completion of the *FY 2012-2016 Strategic Plan*, which outlines strategic

enhancements that PSA will effectuate over the next four years, and designation of PSA's Deputy Director as Chief Operating Officer.

As you can see, CSOSA has accomplished a great deal in the provision of comprehensive supervision services for offenders and defendants in the District of Columbia. Moreover, both CSP and PSA have greatly benefitted from implementation of Government Performance and Results Act Modernization Act (GPRA MA) of 2010. GPRA MA has helped to usher in a performance based operating structure and culture at CSOSA that allows us to efficiently and effectively execute our public safety and supervision related functions, while simultaneously maximizing our limited resources.

For example, one of CSP's agency priority goals calls for ensuring that timely assessments are conducted to determine appropriate levels of community supervision and the need for behavioral health and supportive services. In FY 2012, CSP met its targeted 80 percent goal of ensuring that drug tests are conducted on all offenders at the time of intake, and thus far this year is exceeding this goal by six percentage points. In order to continue improving on this particular performance measurement, CSP plans on increasing its target for the percentage of offenders drug tested at the time of intake from 80 percent to 85 or 90 percent in FY14.

PSA also met new standards issued by the Office of Management and Budget for research-driven budget enhancements and GPRA MA for Agency performance improvement and quality control. For instance, PSA completed its *FY 2012-2016 Strategic Plan,* based on feedback from its criminal justice and community-based partners, results from its previous high priority goals and objectives, and anticipated challenges and opportunities over the next four years. Additionally, PSA named its Director of the Office of Strategic Development as Performance Improvement Officer (PIO). As mandated under GPRA MA, the PIO reports directly to our Chief Operating Officer and assists in driving performance improvement efforts across the organization through goal setting, data-driven performance

reviews and analysis, cross-agency collaboration, and personnel performance appraisals aligned with organizational priorities.

While recent reductions in resources and ongoing budget uncertainly have undoubtedly complicated our Agency's ability to conduct business as usual, going forward, CSOSA is committed to continue doing our best to fulfill our mission of supporting the fair administration of justice and promoting public safety in the Nation's Capital as well as nationally. CSOSA appreciates the Subcommittee's ongoing support of our mission and looks forward to continuing to work with you and your staff.

Thank you again for the opportunity to present both our operational achievements and budgetary challenges before the Subcommittee this afternoon. We will be pleased to answer any questions you may have.

NANCY M. WARE
DIRECTOR
COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Director Nancy M. Ware serves as the Agency Director of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA). In that capacity she leads the agency's 800 federal employees in providing community supervision for over 15,000 adults on probation, parole, and supervised release in the District of Columbia.

Nancy Ware has over three decades experience in the management and administration of juvenile and adult criminal justice programs on the local, state and national level. Prior to assuming leadership of CSOSA, Ms. Ware guided the Agency's compliance with the Government Performance and Results Modernization Act of 2010 (GPRA), focusing on strategic planning and performance measurement. Her organizational experience includes serving as the first Executive Director of the DC Criminal Justice Coordinating Council (CJCC), where for eight years she developed the infrastructure to promote collaboration between the District of Columbia government and the executive and judicial branches of the federal government on critical public safety issues. One of Ms. Ware's proudest accomplishments at the CJCC was the development of the technical capability to support criminal justice information sharing among CJCC member agencies. Ms. Ware's other professional experience includes serving as Director of Technical Assistance and Training for the Department of Justice's Weed and Seed Program and as Director of National Programs for the Bureau of Justice Assistance, Office of Justice Programs. Early in her career she also served as Executive Director of the Rainbow Coalition, Executive Director of the Citizenship Education Fund and Executive Director of the District of Columbia Mayor's Youth Initiatives Office.

Nancy Ware is a native Washingtonian who has devoted her professional career to public service and has spent the last several years working to ensure that the nation's capital remains safe for residents, workers and visitors, and that juveniles and adults who have become involved in the criminal justice system are provided opportunities to contribute and thrive. Ms. Ware holds a Bachelor's and Master's degree from Howard University and has three children and three grandchildren.

Mr. CRENSHAW. Well, thank you all both very much. We will start some questions. I see Mr. Serrano has arrived and I am sure he will have a question and maybe have a statement. Mr. Serrano, would you like to——

Mr. SERRANO. Thank you, Mr. Chairman. I would like to make a brief opening statement. First of all, I apologize for being late. The Acela is on time 99.9999 percent of the time, and that is true, but not today. It must be something done in Boston by those Red Sox fans or something.

Thank you, Mr. Chairman. I would also like you want to welcome Judge Eric Washington, Judge Lee Satterfield and Director Nancy Ware. To the judges I thank you for once again appearing before this subcommittee. For Director Ware, welcome and congratulations on taking over this challenging job which has such a large impact on our community.

I once again look forward to hearing your views on the current challenges facing the D.C. Courts and CSOSA. In my view, the largest issue facing your agencies, and indeed the Federal Government today, is the impact of the sequester. Your written testimony details a number of steps that the D.C. Courts and CSOSA will be taking to minimize their impact, but undoubtedly they will have an impact that will not be positive. I hope you will be able to share your thoughts about the effect of the sequester on your ability to ensure justice in an efficient manner as well as vital supervision and rehabilitation services.

I would also like to hear if you have any belief that there will be an impact on public safety from these damaging cuts. I had hoped not to ask these sorts of questions today, but unfortunately we have not been able to work out a compromise that will help maintain the levels of services that Americans expect of their government.

In any event, I thank you for your service, I look forward to your testimony, and thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you, Mr. Serrano.

Let's start by talking a little bit more about sequestration, because I think that is on everybody's mind and you all touched in your opening statements on the impact that it is going to have on you all, and I think everybody on this committee agrees that that is not the best way to reduce spending. You ought to prioritize issues and some need more money, and things that aren't working, then you can reduce spending.

But it sounds to me like you all have thought this through. Some agencies we talk to seem to have planned for the sequestration and they will have different impacts on different people. Some agencies seem to have not really planned on it. When I read that the Secret Service, their plan to deal with sequestration was to close the White House to visitors, I am not sure. It makes me wonder how early they started thinking about their plan. But I appreciate the fact that it appears that you have thought about that.

Talk a little bit more about the impact it is going to have, but also talk about what is meant in terms of going through this exercise, are there things that you have learned that you may not have learned otherwise unless this had happened to find some good in

these difficult situations, that maybe there are some things that you can do that are more efficient, more effective.

Can you touch on that? As well as maybe elaborate some, because Mr. Serrano wasn't here, but you talked a little bit about the impact it is going to have, and also any positives that you have found ways to actually be more sufficient. I will start with you, Judge.

Judge WASHINGTON. Thank you, Mr. Chairman. I think that, and I hope I didn't rush through it too quickly, the impact that the sequester is having on us is that we have had to cut significant contractual services. We have tried to keep them in areas that are non-case processing. They range from contractual services that involve rodent control and other issues of maintenance for our facilities to, of course, a hiring freeze that we have implemented more recently. But before that we were holding vacancies open.

It wasn't an official freeze, but we weren't filling them all because we anticipated, having been on this continuing resolution for a number of years and seeing the cliff potential, we anticipated what might be happening. So we were able to absorb some of the reductions, in addition to the cutting of contractual services and the hiring freeze, through vacancies. What we did to try to address that issue is we engaged in a very aggressive cross-training program, which is a stopgap measure at best because we have 10,000 people come to our courthouse every day, 500 prisoners who come every day to our courthouse, and you can only move people around and have them cover for short periods of time.

In the long run, and this is what I meant when I said while we are able to absorb some of the cuts now, in the long run they are going to impact us more greatly because we won't be able to provide the same level of service to the public that the public has come to expect and certainly, we believe, deserves.

One of the other areas that we have been fairly, I think innovative, as you suggest, Mr. Chairman, is that over the past few years we have tried to make changes to our Criminal Justice Act program in order to control costs. Chief Judge Satterfield has done a magnificent job of working with his presiding judges to create staggered calendars and other sorts of efficiencies that have reduced waiting time which is, of course, a big expense to have lawyers sitting around waiting to have their cases heard or resolved. The Superior Court has also instituted in the Criminal Justice Act process in conjunction with lawyers practicing under our Criminal Justice Act, standards which when met are compensated at a certain level. So we are able to better forecast what our expenditures are and to make adjustments if necessary without compromising either the legal services that are being provided by the lawyers or the amount that you have appropriated for our fund.

So there are some actions we have taken to become more efficient in our court operations. Some of the other advances that we have made in our ability to, for example, get a new case management system in the Court of Appeals that allows us to talk and interact and integrate with the Superior Court case management system has also eliminated the need for a lot of paper. It is now electronic, which has reduced some of the needs for our employees that we have now redeployed into other areas.

So we are trying to work within the constraints that have been imposed upon us. But, as I said, we are so heavily operationally tied to having people meeting those individuals who come to the courthouse, we have not yet got the kind of population, despite our advances in electronic technology, where we are apart from the community. We are very much integrated within that community and people come to our courthouse every day in droves to seek the kinds of justice and support that they need. So to the extent that our personnel are affected and impacted long-term, it could have a very negative impact on our ability to provide the kinds of services that I think you and certainly the Courts want us to provide.

Mr. CRENSHAW. Thank you. Director Ware.

Ms. WARE. Yes. I am going to invite Mr. Cliff Keenan, who is the newly appointed Director of the Pretrial Services Agency, to join me to speak to the impact on the Pretrial Services under CSOSA. I will speak specifically to the Community Supervision Program.

We are finding that the sequestration has been quite a lesson learned for us in many ways, but not always very constructively, unfortunately. We are finding that we have to face hiring freezes, as other agencies have mentioned, and reallocation of our resources towards our highest risk offenders. Now, you might say that this is a good lesson learned because we now realize that the few resources that we have will have to go mostly to our riskiest offenders. So in order for us to maintain our focus on our mission, we are focusing more of those resources on our highest risk clients, which means that we will be placing low risk offenders on new innovations like kiosks. Under kiosk reporting, offenders don't have to report to a supervision officer every single day, they go in and they use a hand reader which is a biometric scan in order to report. And as long as they are maintaining their supervision conditions for employment, staying drug free and maintaining their appointments with the kiosk, then we can maintain them on this kind of technology.

But those who are medium risk and maximum and intensive risk are the ones we are most concerned about. So we want to be sure that we provide them the level of supervision that they require, as well as the level of support that they require. For these we are finding that we are having to cut our treatment dollars, and mentoring programs which have been very successful. Additionally, we are supplanting as much as we can through partnerships with universities, potentially looking at using students to come in and help us with some of the treatment requirements. We don't know how successful this will be because it requires a very high level of expertise.

We also have a lot of special initiatives that we have conducted with our law enforcement partners like the Metropolitan Police Department's (MPD) All Hands on Deck Project. They help us with our accountability tours when we go out to do offender home visits and those kinds of things. With the sequestration, we are probably going to have to cut back on a lot of the things that we have done traditionally in the evenings with our staff and with other law enforcement partners, due to our inability to pay staff overtime.

So there are positive lessons learned in terms of reallocation of resources, but there are also very negative lessons learned in terms

of the potential impact the sequester may have on the recidivism rate for this population, which we have done very well with over the last 10 years. Also diminishing the return on how well we have done with making sure that people graduate out of supervision and do well with their monitoring so that we are able to terminate them from supervision. We have had very good success in this regard over the past 10 years and we are hoping that that doesn't get compromised by the sequestration.

I will turn it over to Mr. Keenan.

Mr. KEENAN. Thank you, Director Ware, and Chairman, good afternoon, Ranking Member Serrano, Congressman Quigley, Congressman Womack. Again, I am Clifford Keenan. I am the Director of the Pretrial Services Agency which is an independent entity within the Court Services and Offender Supervision Agency.

As everybody has already alluded to, dealing with the sequestration from a law enforcement agency perspective is challenging because there is a balance that needs to be struck between making sure that we are doing what we are appropriated to do, but also that we are paying attention to the community safety and from our perspective to the needs of the court.

Everything that we do in pretrial is based upon an order received by a judge to a defendant who is released pending trial. Everybody who has been arrested pending trial is presumed to be innocent so we don't have the same authority or autonomy to deal with them as CSOSA does with their probation or parolee population. We too believe that in addition to strong effective supervision, that providing pro-social interventions such as substance abuse treatment services as well as mental health treatment will go a long way to keeping a person from reentering the criminal justice system.

So we too are looking at contract treatment reductions. We are reducing by 50 percent, which means that almost half a million dollars of money that we would otherwise be providing for substance abuse treatment for the defendant population will not be spent. We will bring that population in house and our own trained staff to be providing some of the group sessions that they should be receiving.

We are also engaging in a limited hiring freeze. We are not going to be able to hire all of the positions that we are currently authorized to hire pending the sequestration. We are also taking reductions in IT, our training, as well as our laboratory costs.

But I think most importantly from our staff perspective, the same as CSOSA, we are taking a 6-day furlough for all 365 of our staff. We worked very closely with our union in terms of trying to implement this in a fair and consistent way, and what we agreed upon was that everybody, from me down to the newest program assistant, would be taking 4 hours per pay period over the course of the 6 months in order to get up to that 6-day furlough. It was not extremely palatable on the part of some of our staff, but they understand that there are very few choices that any of us have in this.

So under the circumstances, we do think that we are doing the best we can in terms of balancing our obligations both for community safety and the court needs as well as doing what we can with the dollars that we have.

Mr. CRENSHAW. Thank you very much.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Director Ware, you made a strong statement about the effect sequestration will have on public safety. I do not disagree. Can you tell us how the reductions in your budget, particularly the furloughs you will have to implement for staff, will affect safety in the Nation's capital?

Ms. WARE. Yes. Thank you very much. Well, one of the things that CSOSA prides itself on is how well we have really done with putting in place best practices in the area of probation and parole supervision. As a result, we have been able to reduce the recidivism rate over the past 10 years. Additionally, the ability of folks to be able to complete supervision successfully has been increased. Our partnerships with our law enforcement partners such as the courts, the Metropolitan Police Department, the U.S. Attorney's Office and others, including the U.S. Parole Commission, have been very successful in addressing the highest risk offenders in the District of Columbia.

We have implemented a number of tools, including the use of GPS, which is global positioning system, to monitor offenders and serve as a sanction tool for those offenders who are under our supervision. All of those things that we have been able to put in place over the years have really benefited the District of Columbia, the visitors here, as well as those people who work here and live here. However, we are really concerned right now because we are slowly seeing some shifts in the recidivism rate among our offender population and we are concerned that this shift, which is very small right now, may increase to the extent that we will have to look at other ways to sanction those under our supervision more. This may mean that they will continue to go back to prison rather than us being able to maintain them effectively in the community and help them to become stabilized and to become productive citizens again.

Mr. SERRANO. You said earlier that you reduced the number over the last 10 years you said, but now you see a shift recently?

Ms. WARE. We are starting to see a slow shift going upward from 2010, yes.

Mr. SERRANO. So you are concerned that these cuts will just add to that.

Ms. WARE. Yes. 2010 was when we started seeing our budget flattening, and so we are concerned and we are watching and tracking it very carefully to try to use every innovation that is at our disposal. We want to utilize all the tools that we can come up with within the resource allocation that we have in order to make sure that the positive trends that we have been able to implement over the last decade, will not be reversed.

Mr. SERRANO. Right. As you know, we not only deal with the impact of the sequester, but we also have the issue of a 2013 continuing resolution for the remainder of the year. Are there any recommendations or policy changes that you would like for the committee members to consider that may help your agency mitigate the impacts of both of these areas?

Ms. WARE. Absolutely. One of the things that we would like the committee to consider is to afford CSOSA the opportunity to retrieve 50 percent of its end of the year unspent funding, which is

often very difficult for us under a continuing resolution. It means that we don't have a full budget year to spend the money that we need to be able to spend in order to meet the goals that we placed on our agency. So part of our request would be to allow us to retrieve 50 percent of the funds that are unspent at the end of each fiscal year. I think we submitted that as a request.

Mr. SERRANO. Before you spoke about your working relationship with the courts and with other groups. How about the working relationship with the community college to assist offenders with furthering education skills? Maybe the judges can speak to that too, if there is any relationship that we need to know about or something that needs to be better.

Ms. WARE. Well, we definitely would like to improve it. We had a very good working relationship with the community college here in the District of Columbia, UDC. The issue that came before us was the cost of tuition for our offenders, and so we would have to look at ways to assist them in coming up with the requisite costs even though it is not the same level of funding required for them to enroll in the community college. Nevertheless, they still have to come up with some level of funding in order to participate, and at one time we were able to supplement that, but now we are not able to do that as well.

Mr. SERRANO. All right. Is there a relationship between the court and the community college, or is that strictly something that they deal with?

Ms. WARE. It is probably on our side.

Judge WASHINGTON. Yes, it is more on the CSOSA side than the court side. Of course, we remain open to any discussions or conversations about how we can assist them and they can assist us. But we have not had any formal conversations about that.

Mr. SERRANO. All right. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you, Mr. Serrano.

Mr. Womack.

Mr. WOMACK. A couple of questions for the judge. One of those would be I noticed in your testimony that the median time on appeals has been reduced from 500 days, thereabouts, whatever the number was, down to about 352. That is still the better part of a year. That is a long time. I am a big believer that justice delayed is justice denied. So why is there still a lengthy process there?

Judge WASHINGTON. That is a very complicated question, but I appreciate it, Congressman. We have in the District of Columbia, as you know, no intermediate court of appeals, which means that all of the cases that are decided in the Superior Court, and you heard the numbers, have direct appeal rights to the Court of Appeals, except for small claims cases where they have to file an application for an allowance of appeal. We still have to decide that. But still, it is not as cumbersome a process.

We are unlike all of the other court systems in the country that have only two levels, no intermediate court of appeals. Their jurisdiction is almost 95 percent discretionary, so even though they don't have an intermediate court of appeals, they can decide how many cases to hear and they dismiss the others by denying the appeal.

We, as a matter of right, have jurisdiction over all of these cases and we have prided ourselves on giving reasons for every decision that we reach. So even in those cases that are ultimately dismissed or remanded with an order, we tend to include information advising the litigants as to why their case has been denied or dismissed, not a one word "dismissed" or "denied" or "affirmed" depending on the perspective as it comes to us or after we are finished with it.

So what happens is our cases go through a process which is necessary for us to get the information, the record—which has now been sped up through our case management system—and briefing from the lawyers, and it is the sheer numbers. Last year we had over 2,000 appeals filed in our court, and whenever you have that number, it is just going to take time. It is just part of the process.

It reminds me that in 1980 the Congress actually passed a bill creating an intermediate court of appeals, recognizing that handling that many appeals as a matter of right and giving reasoned decisions, reasoned opinions for each of our decisions, was a burden that was unlike many courts in the country. It didn't pass the Senate. But the bottom line is we are trying to implement efficiencies to make up for the lack of that opportunity to have error correcting done by a mid-level court, and then for us just to look at the larger constitutional and other issues which face the citizens of the District of Columbia.

So that is the larger overriding picture. It doesn't mean we can't do better at case processing. We are making every effort to do that. We have implemented any number of reforms. We have screened cases differently and are aggressively using senior judges more than we have in the past. We asked a couple of years ago for an appropriation for appellate mediators. We don't have an appellate mediation program that is ongoing. We have piloted two different ones trying to do it without resources, ultimately figuring that we could not continue to model a haphazard kind of ad hoc program and actually make it effective, to try to take some cases that may be amenable to mediation out of the calendar, thus giving us the opportunity to get to more cases.

So we are making efforts to reduce the time. I don't disagree with you. We would all love for the time on appeal to drop even lower, and we will continue to make changes.

Mr. WOMACK. Percentage breakdown on criminal versus civil on the docket, what are you looking at?

Judge WASHINGTON. Criminal cases make up probably 60 percent of our caseload. Civil cases, family cases, make up the other 40. It may even be 55–45.

Mr. WOMACK. And you mentioned the small claims. What is your threshold amount for filing small claims?

Judge WASHINGTON. Threshold amount for small claims. $5,000 dollars, I believe.

Mr. WOMACK. Is that adequate? It sounds a little low for this area.

Judge WASHINGTON. You know, the——

Mr. WOMACK. Lawyers would probably disagree with me.

Judge WASHINGTON. I have to admit, Congressman, I haven't given it much thought. I don't know if it has been part of any dis-

cussion that Chief Judge Satterfield may have had, but I will defer to him on that question.

Judge SATTERFIELD. Thank you. It is a low amount and we are getting inquiries from lawyers who want us to raise that amount to be more consistent with some of the other jurisdictions in the metropolitan area. That is something that we look at over time and it is something that helps us move things along faster. It is a consideration.

Mr. WOMACK. And I know I am going to run out of time here in just a minute, I am curious on both sides, both on CSOSA and on the court side, nowhere in the testimony did I hear what we are doing in this multi-cultural setting that we find our ourselves, and from Arkansas it is pretty profound there, on translation services, and that is costing a substantially large amount more money every year for the individuals that are coming through our court system that English is not a primary language. So speak to me on what we are doing as far as translation goes and the pending costs of it.

Judge SATTERFIELD. Well, I don't have the exact cost figure, but I know that we are doing a tremendous amount of activity in that area because we provide that resource to anyone that needs it so that we don't have any due process violation.

Mr. WOMACK. How many linguist services do you have to have available?

Judge SATTERFIELD. I am sorry?

Mr. WOMACK. How many different linguist services do you have to have? How many different languages?

Judge SATTERFIELD. Well, there are five that are predominant in our demographics, but there are many, many more. We are fortunate here in the District to be able to provide interpretation to just about anyone because the State Department is here.

We are able to find certified, trained interpreters who want to do it. And we are starting to access things like interpreter services electronically in order to provide that service. Because we are federally funded, we are required by executive order to make sure that we provide it to anybody in need. Even for the Donald Trumps of the world, we have to provide it. If he came in here and said I want you to pay for my interpreter, we would have to make sure that that is done if it is going to impact that case because——

Mr. WOMACK. Well, sometimes he speaks in a language I don't understand too.

Judge SATTERFIELD. But he's just an example. Some folks have the ability to afford it and some folks do not. I am sorry, I have just been handed a number. The total number in 2012 is 8,719 times we had to send interpreters to a courtroom to interpret in a particular case.

Mr. WOMACK. Ms. Ware.

Ms. WARE. On CSOSA's side we pride ourselves with being a very diverse workforce. We have done that intentionally so that we can attract folks from various backgrounds into the workforce so that they can serve not only as our community supervision officers and in other capacities, but also so that they can provide a well-rounded approach to supervision to folks from different backgrounds. That being said, of course, we don't have every single cul-

tural and ethnic group on our workforce, but we do have a Diversity Council that has been put in place that both Cliff and I are the co-chairs of so that we can promote diversity across the workforce.

We also have an online service that provides interpretation for folks who come before us or come before our agency who need special interpretation services, but I don't have the cost for that right now. I will have to get back to you on the cost of that. But that is pretty much how we approach it.

[The information follows:]

CSOSA Interpreter Service Costs Response

The following information is being provided in response to a question posed by Rep. Steve Womack during the Subcommittee's March 18th, 2013 budget hearing for the D.C. Courts and the Court Services and Offender Supervision Agency (CSOSA) for the District of Columbia. In particular, Rep. Womack asked the witnesses to provide information on what is being done as far as translation services and the associated costs.

The population of the District of Columbia consists of a broad range of ethnicities and backgrounds. Approximately 5 percent of CSOSA's offender population does not speak English. To address communication barriers with non-English-speaking offenders, CSOSA employs offender supervision and treatment support staff with foreign language capabilities. However, in certain circumstances, CSOSA must use contract over-the-phone or in-person (face-to-face) Interpreter Services. CSOSA also relies on Interpreter Services to interface and communicate with offenders that are hearing impaired.

To that end, CSOSA has complied the following spreadsheet to demonstrate the level of resources dedicated to supporting our agency's contract Interpreter Services between fiscal years 2010 and 2012. The data below includes both contract Interpreter Service costs for CSOSA's Treatment Management Team, which provides assessment, case planning and monitoring services for offenders of foreign languages and for CSOSA's Community Supervision Service, which is responsible for providing direct supervision of adult offenders on parole, supervised release and probation:

CSOSA Aggregate Interpreter Service Funding History

Fiscal Year	Community Supervision Service (CSS) Interpreter Services Costs	Treatment Management Team (TMT) Interpreter Services Costs[i]	Total Actual Obligations
2010	$42,131[ii]	$9,751	$51,882
2011	$38,994[iii]	$11,342	$50,336
2012	$36,627[iv]	$6,583	$43,210

[i] FYs 10-12 TMT Interpreter Services Costs are reflective of face-to-face services only.
[ii] FY 10 CSS Interpreter Services - $6,485 for over-the-phone services and $35,646 for face-to-face services.
[iii] FY 11 CSS Interpreter Services - $6,137 for over-the-phone services and $32,857 for face-to-face services.
[iv] FY 12 CSS Interpreter Services - $6,345 for over-the-phone services and $30, 282 for face-to-face services.

Mr. WOMACK. A couple of final questions and then I will yield back. You mentioned GPS. I am assuming ankle monitors, you do some type of ankle monitoring?

Ms. WARE. Yes, we do.

Mr. WOMACK. Okay. Drug courts?

Ms. WARE. Yes.

Mr. WOMACK. Effectively?

Mr. KEENAN. We believe it to be effective, yes. We did a study last year and we made some changes to the program. We have reinstituted or I guess reinvigorated the staffing which is common throughout drug courts where the defense attorney, the judge, the defendant and the pretrial service officer get together in order to identify problems. The court itself I believe is going to be doing an assessment this year of the Drug Court Program as well. But ours is one of the longest standing drug courts.

Mr. WOMACK. My experience has been that those are very effective alternatives to the type of jurisprudence that we see in our traditional court system.

Mr. Chairman, I would just say that given the effects of sequester on top of the effects of the economy and a lot of other things that drive our crime rate higher, that the manifestation of mental illness and the manifestation of drug dependency causes so many other problems across the spectrum, and I would just hope that these folks and others like them can do whatever it takes to address some of those underlying issues so that they don't manifest themselves in a lot of other extraordinary ways that do rise to some very violent type outcomes.

With that, I appreciate the panel today. I don't envy your work, and thank you so much for your time and your testimony today, and I yield back.

Mr. CRENSHAW. Thank you, Mr. Womack.

I now turn to Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. I thank the panel as well.

Judge Washington, my experience at 26th and California is that a downturn in the economy at the same time as cuts in budgeting for courts is a potent and dangerous combination. In Cook County we had more people get in trouble paying their bills, credit card bills, their rent, their mortgages, and at the same time that combination is fewer of them could afford an attorney to help them deal with those issues. Obviously on the criminal side we tended to see an up-tick in criminal activity and again more people in need of the public defender's office. Is this a similar issue here?

Judge WASHINGTON. Congressman Quigley, it is. We see such an increase, and I spoke about it very quickly when I was talking about self-represented litigants, *pro se* litigants on the civil side. We have so many more people. We have had a 30 percent increase in the last couple of years in those individuals who are using our Family Court resource center, for example. The landlord-tenant resource center numbers are huge. Thousands and thousands of people are going through our self-help centers. Now, of course, with foreclosures, we have a calendar that has been established in the Superior Court. I probably should let Chief Judge Satterfield talk

more about it, but a calendar in the Superior Court that is focused on those kinds of cases. We have a consumer law self-help center.

What we have done is we have decided that the best thing we can do in this era of diminishing budgets and resources is increase our collaboration with legal service providers, voluntary *pro bono* lawyers from the bar and others who have stepped up and have helped us by manning those centers that we are establishing close to or within court facilities. We can provide the infrastructure, the space, the tables, maybe some telephones, things like that, but, of course, we can't provide the legal services. We look to our bar to do that. And we have increased the number of opportunities for *pro se* litigants to come in and at least get some assistance from lawyers who can get them started.

One of the other things that we did in this area is that we, as I said, recently amended our Code of Judicial Conduct because judges were reluctant to take on the role because they were concerned about how it could be viewed. What we did was thought it through and came up with ways, suggestions, of how judges can better hear self-represented litigants, give them an opportunity to be heard.

Mr. QUIGLEY. If I could ask how that is working, because I can see the other side complaining that the judges are interjecting themselves into the process and perhaps advocating or strategizing.

Judge WASHINGTON. No, we are very careful about that. We gave very specific examples of the types of things that can be done. A lot of it is referring litigants to other places, but also it is just explaining court processes, demystifying how the court system works. Not the substantive areas, not offering them suggestions on defenses, for example, but saying this is what is required when you come to court. This is the kind of thing that we need to hear in order to resolve the case fairly.

We are very concerned and remain concerned about the judges, and we have had a lot of training. But I will let Chief Judge Satterfield also answer that.

Judge SATTERFIELD. I just wanted to add something because I think you hit it that the attorneys would be concerned. Our bar in D.C. has asked us to do more in that area, because the amount of time it took to get through some of those cases with self-represented people were backing up their ability to represent their clients and costing their clients more money because of the waiting that they had to do as we took our time obviously to make sure there was adequate process and access. So they have worked with us on things that could be said and done and how to work with self-represented litigants to be efficient and fair and move forward. So they have not been critical of us. They have actually worked with us in trying to improve that area.

Mr. QUIGLEY. On the criminal side, who can speak to the increase in perhaps cases, but also the need for public defender activity?

Judge SATTERFIELD. Well, we are very pleased with the public defender service that we have. We think they are very top notch and they do a good job and they take most of the serious cases. We are fortunate to have funding through Congress, obviously, for the remainder of the defender services that are necessary. Crime has

sort of remained steady for a while. The thing about that is you never know when something is going to be the next thing. It was crack cocaine here in the nineties and so forth. Now, as the country is starting to look at synthetic drugs and things of that nature, we don't know how that will impact our communities until it really gets to our communities.

Mr. QUIGLEY. What is the percentage of cases with public defenders? Is that funded in the same manner? Is sequestration affecting that?

Judge SATTERFIELD. Yes. They were absorbed in CSOSA's budget. It was an odd kind of arrangement. But they are affected by the sequestration. What I have been told by the Director of the Public Defender Service is that she is going to do what she can to make sure that all of her clients are represented in court fairly and competently. So I don't know quite the impact that is going to have. I know she is reworking things, like we have done, contracts and other things, to try to reduce any furloughing that she would have to do, but I don't know the specifics of her plan.

Ms. WARE. The Public Defender Service has a separate line item budget and so they are responsible for handling the sequestration just as we all are. It is my understanding that all of us are affected similarly in terms of trying to manage the sequestration. But as Chief Judge Satterfield said, that is something that you would probably need to sit down with the Public Defender Service to discuss, because they have a separate budget that they handle and we don't have any control over their budget.

Mr. QUIGLEY. Thank you, Mr. Chairman. I yield back.

Mr. CRENSHAW. Thank you. Mr. Diaz-Balart, do you have any questions?

Mr. DIAZ-BALART. No, thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. A couple more questions. We have a little more time. I wanted to ask you, Judge, you mentioned in your opening statement about some of the capital improvements you are making, and I know we provide about $40 million a year for capital improvements, and as I understand it you have a master plan. So I would like to hear a little bit about that, about how you decide what the priorities are in terms of capital improvements. Do you do that internally, or does somebody come in and help you assess all your capital needs? Explain how you make those priority decisions. How is that working out? Is there a timeline or a total cost line? Just kind of share with us that master plan for capital improvements.

Judge WASHINGTON. Okay. We developed a master space plan looking forward, trying to determine what our needs are currently and were going to be, and we did this almost 10 years ago now. We then created, after the master space plan was done, a master plan for the space around Judiciary Square, all of the buildings that were part of Courts' inventory but had been shuttered because we did not have the resources to keep them up over the years.

That had caused us to retreat into our newest building, which was the Moultrie Building, which is, of course, now a building that is nearly 40 years old. But still we had put a lot of services in there. So we knew we had to get back out of that building because the building was becoming overcrowded.

We did the master space plan and determined what our needs were. That is a work in progress. Right now, for example, we are looking at how our probate and tax operation is going to address the increasing needs of a demographic that is getting older and older. At the time we were looking at increasing the number of opportunities to have cell blocks attached to courtrooms because we had so many criminal cases. What we have done is tried to make courtrooms that could be used for both purposes. So we equipped courtrooms with cell blocks even though they are being used for civil trials now, because there has been a decrease in criminal cases, and we are looking forward.

We have also increased the opportunity for there to be self-help centers, looking at the demographics of self-represented litigants. So we tried to plan those things into our futuristic view of what we wanted Judiciary Square to look like. Then we looked at technology, IT, multi-door mediation, things like that, and tried to figure out how we could place them. So those priorities have driven to some degree how we have gone out on the Square and renovated buildings.

The big driver, however, was our creation of Family Court, and that was a major and significant reorganization of our court building. Moultrie was housing criminal, family, civil at the time, as I said, and there was a lot of concern about our Family Court and the young kids and everyone having to move through the courthouse, all over it, in order to get services, and coming into contact with individuals who were part of the criminal justice system.

So one of the things that was driving us was the consolidation of that Family Court, ultimately getting it all in one place with a separate entrance and having the support systems from the District Government co-located to make that worthwhile. And that is what we have been working towards.

But we had to get Moultrie decluttered so that we could go back in and reformat the space in a way that made that possible. We have done it in a way that has limited the contact that any family coming in there for typical Family Court matters would have with other parts of the court system, but we haven't completely consolidated it by bringing in the juvenile probation, in-court services and others to that space. And that is what this new addition that I talked about is going to do, it is going to create the additional space.

So there have been a number of drivers. It is something that we look at when we look at demographic changes. In fact, we are about to have a joint managers/judges meeting in which we are going to be presented with updated statistics about the community demographics so that we can make even better strategic decisions about where to put our resources.

So there was a master space plan. We knew what our needs were going to be based on the projected case filings and we knew what kind of services were going to be impacted at the time. As we have gone along through our strategic planning process, we have relooked at the demographics and we are making other decisions. But the space hasn't changed because the increase in filings hasn't changed. Ultimately we will need the space, and they are already telling us that we will have greater need for more space as they

have updated the space plan. But we are just trying to make sure that at least we get to the point where we believe we can effectively administer justice with what we have.

Mr. CRENSHAW. Well, in that regard, we also provide millions of dollars in terms of IT every year. I know that is kind of a whole new area, particularly in the judicial circles. I wonder how that is working? Some agencies come before us and ask for a lot of money for IT and it doesn't always work out saving money. Sometimes it actually costs more money because they are not really utilizing the IT.

So can you comment, because I would think that as you have more technology, then I don't know if that reduces a certain amount of need for space, things like that. Do you have any facts or figures? Can you tell us how it is impacting you all? Is that being managed well? Does that help coordinate cases? How does that all work out in terms of saving money in the long run?

Judge WASHINGTON. Well, I don't have facts and figures for you on the impact of the IT developments. I can tell you about efficiency. One of the key advantages which is helping, as I was remarking to Congressman Womack, to drive our time is this new technology that allows our case management systems to talk and allows us to get not only electronic digital transcripts but the case record. That has been important. We have also increased our efficiency by utilizing remote access technology like iPads. Our judges have iPads now. They are able to sign orders and work on cases even when they are not at the court. I don't know whether it is good or bad, we work 24 hours a day now it seems, but that is one of the things that has increased our efficiency and allowed us to work cases more quickly.

Of course, cybersecurity, especially in the courthouse, is critical. So we have increased our technology which has helped with efficiency. It has also created challenges with cybersecurity issues that we have to continually monitor. So in terms of its impact on the court, I think it has been a boom to us in terms of that.

The cost in terms of how much it has saved us I could not tell you, but I can say this: We really see long-term, assuming we can continue to utilize the technology in the way we are starting to do it, through our access to our web portals, opportunities for people to get information and access to the court without having to come perhaps to the court as frequently as they had before. There is more and more that we can do online.

For example, we established a remote location out in one of the quadrants of the city in a hospital where domestic violence victims would go to have their injuries treated. We were able to remotely issue protective orders in order to try to allow those people to get the service they need, get the protection they need, and at the same time be able to address not only their physical but their emotional well-being. Victims can set themselves up through other services the District offers to protect them more beyond the paper, beyond the order that the court issues. So I think that is one way. I am sure there are others.

I don't know if Chief Judge Satterfield——

Judge SATTERFIELD. Just to add briefly, a lot of jurisdictions are doing E-filing, which we are doing, in most of our divisions in Su-

perior Court, and expect to have it in all. You expect to see some cost savings there because people don't have to come down, they don't have to engage the Clerk's office, they don't have to go through security to get into the building. But you also have to be mindful that a portion of the population, does not have the kind of access to be able to do E-filing even. So as you go forward in those areas, you have to be mindful that you are not cutting off folks from access to the court. But we are moving more in that direction and have been for some time.

Mr. CRENSHAW. Thank you very much.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. I just have a couple more questions.

Judge Washington, your budget has been relatively flat for 3 years now. Can you describe some of the measures you have undertaken in these tight fiscal times? I know you already cut drug treatment and mental health programs, which is not a good thing, but we understand that is what had to be done. What other costs have been cut from the budget in recent months?

Judge WASHINGTON. Wow, where to start. What we have done in terms of those costs, as I said, we tried to keep them out of the case processing area to the extent we can. There are contractual services, like you suggested. There are services that impact on the safety of the public who are going into our buildings and our employment staff. I mean everything from rodent control to maintenance. Anything we can cut that doesn't impact on our litigants who have or are seeking our service. So that is a wide range of contracts that we have eliminated.

We have done a lot of, as I said, holding vacancies open in order to achieve savings, and then what we have done is we have cross-trained employees. So now we have employees who are able to go over and fill in to provide services. Is it the same quality as having somebody there full-time? No. But we are saving money in that respect.

We have slowed down our contracts for our capital projects. We have ceased moving forward as quickly with our projects as we can, as we were planning to and hoping to, and we can do that for the convenience, of course, of the government, to keep that project going, but at a much slower rate. We don't want to lose the contractors and we don't want to lose the opportunity to hopefully long-term enact some savings.

So I think those are the major things that we are doing right now to address the reduction in our budget. And again, we are trying to use technology to increase the access people have right now. The Court of Appeals is in the process of developing its electronic filing in order to limit the number of individuals we are going to have to put back on our payroll at the time if we are able to increase back or put our staff back into some viable size. So I think we are looking ahead trying to plan, but at the same time the cuts have been, as I said, in the contractual services and in the vacancies.

Mr. SERRANO. And moving towards the more use of electronics, is that by training, retraining folks you have on board now, or finding new folks, or both?

Judge WASHINGTON. I think it is both. On the one hand as we do move towards increased use of technology, the job requirements change, and through attrition we are looking at reforming those positions. Through, the monies we did receive that were targeted toward helping us with HR and trying to increase the robustness of our HR department, we have put in place ways of tracking applicants for jobs that has made it much easier for us to get really high quality individuals into those positions, people who have some of these backgrounds that we need.

So we are looking at people, we are looking at retooling, reformatting, I am not sure what the right word is, but our HR department is looking at these positions as they come open, looking at how technology can be used to enhance them, and also looking at how other efficiencies might increase with the hiring of different types of personnel. So, yes is the short answer.

Mr. SERRANO. Sure. And that was part of my question I guess before about relationships you say with law enforcement and so on, but also relationships with educational institutions that may be able to provide both advice, guidance and future personnel. We all know there are a lot of folks graduating who can't seem to find work. So that is related.

One last question, Mr. Chairman. Director Ware, with passage of the Second Chance Act, there now seems to be a heightened importance of the importance and social value of supporting offender reentry efforts and programs. Despite this renewed national focus, many of the men and women returning from prison continue to face some very serious barriers in terms of unemployment, access to housing and substance abuse.

Are there unique challenges that your parolee and supervised population confront when reintegrating back into communities here in the District of Columbia?

Ms. WARE. Yes.

Mr. SERRANO. I know that is a question you could talk about for 3 hours.

Ms. WARE. I will try not to do that to you. But the short answer is yes, and I am glad you brought that up again because one of the things that we found is that if we are able to stabilize them in those three areas, housing, treatment and employment, then we have a much, much greater success rate with keeping them from reoffending.

Mr. Quigley mentioned some of the things that really help to stabilize this population. One of the best practices that we have been observing is a practice from out of Chicago called the Safer Foundation. I don't know if you are familiar with them, but they do a yeoman's job of getting this population employed. It is one of the practices that we were hoping to be able to bring to the District of Columbia as a model, because we feel that if we could increase the employment for our offender population, we would decrease the recidivism rate substantially. As you already mentioned, even those folks who are graduating from college are having a difficult time finding jobs, so our population definitely has a very difficult job. So we would have to have a unique approach to getting them employed, and the Safer Foundation has very unique approaches and

a great success rate. Again, we would like to bring to the District of Columbia.

That being said, 32 percent of our employable population is unemployed. So we have people who actually have graduate degrees, who actually have a GED or high school diploma, but we can't get them jobs. We also have an increasing percent of our population who have behavioral health needs, as I mentioned earlier, substance abuse, co-occurring disabilities, substance abuse and mental health, which is a very, very prevalent in this population, as well as physical health challenges.

So there are a number of things that, as Mr. Womack mentioned earlier, our ability to address them, we have found that that has really been the hallmark of our success with this population, and I am sure Cliff would say the same.

So we are desperately trying to make sure that we manage our mission in a responsible manner by using every resource available to us to continue to stabilize this population and to give them the services that they need, but also to hold them accountable, and I don't want to diminish that part of our responsibility as well.

With that, we use things that are sanctioning tools like GPS that somebody mentioned and Halfway Back, which is a step back to short-term jail stay. But some of those options that we once had available even in our sanctions, will now have to be looked at again in terms of how well we can resource those opportunities.

Mr. SERRANO. As a follow-up, Director Ware, we know all the strides we have made in dealing with females in our society, making society more responsive and fairer in so many ways, certainly during my lifetime. But as it has to do with female offenders, are there still special challenges they face and what are we doing about that?

Ms. WARE. Thank you for that question. Yes, there are very unique challenges that females in the criminal justice arena has to face. Much of it has to do with long-term trauma that have never been addressed, abuse, of course parenting issues. So as a result we have over the last few years put in place several special initiatives focused on our female population.

We have a unit within our residential sanctions program for females, specifically focusing on their unique needs and addressing some of the behavioral health issues that they have which are very, very prevalent within the female population. We also have three supervision units that are specifically trained to work with women.

We have done that because we find that historically, as you know, the probation and parole approach has been focused on men and has really rarely taken into account some of the of the unique needs of women. But that is now changing and more and more nationally we are having conversations about the unique needs of women. So CSOSA has been in the forefront of those changes, and we have done what I believe to be a really good job of addressing some of those unique needs, and we have been sharing some of our lessons learned with others around the country.

Mr. SERRANO. Well, that is my last question. I want to thank you, Mr. Chairman. And I want to thank you for your service. We know just how difficult it must be, the work you do. In this society there are some people who believe in one strike and you are out,

not three. So what you do every day to kind of give these folks a second chance is something that we really appreciate. Thank you.

Ms. WARE. And thank you for your support over this last decade for CSOSA. I appreciate that.

Mr. CRENSHAW. Mr. Diaz-Balart.

Mr. DIAZ-BALART. No questions.

Mr. CRENSHAW. Thank you all for being here. Thank you for what you do every day to protect the lives of the people that live here, that work here, that visit here. I know these are tough times for everybody, and I really appreciate the work that you do under these difficult situations in trying to do things more efficiently and more effectively than ever before.

With that, this hearing is adjourned.

Financial Services and General Government Subcommittee
Hearing on the DC Courts and Court Services and Offender Supervision Agency

Questions for the Record for Eric T. Washington, Chief Judge, District of Columbia Court of Appeals and Lee F. Satterfield, Chief Judge, Superior Court of the District of Columbia

Questions for the Record Submitted by Chairman Ander Crenshaw

Security Improvements and Upgrades

The Moultrie Courthouse is an extremely busy place. With approximately 10,000 visitors per day, anywhere between 250-300 prisoners per day, and roughly 5,000 pieces of mail each day, security is a top priority to the D.C. Courts. In the past, the Courts have requested the need for a mail screening facility. You have indicated to this committee that despite the budget cuts, this is still one of your highest priorities.

Question: Have you ever had an incident where public safety was compromised via mail, such as anthrax or other biological threats, for example?

Fortunately, the D.C. Courts have not had an incident where an actual toxin was discovered in the mail; however, the Courts receive two or three suspicious pieces of mail each week. Some of the letters or packages contain suspicious substances that turn out to be inert, but the courthouse is disrupted. The public building entrance where the mail is screened must be closed when a suspicious substance is detected in the incoming mail. In addition, areas of the building must be evacuated when security officers identify potential explosives in packages. HAZMAT teams or bomb squads must be summoned, adding to the commotion. These disruptions have a negative impact on operations and pose a risk to the secure environment needed for the administration of justice.

Recent incidents involving ricin-laced letters mailed to the President, a Senator, and a Mississippi judge underscore the urgent need for a secure facility, away from the public, to screen incoming mail. In the absence of such a facility, public safety is potentially compromised each time a suspicious letter or package is received at the D.C. Courts and must be handled in a space not designed for hazardous materials.

Question: When do you expect to go forward with this project?

The Courts expect to begin the secure mail screening facility this year.

Question: How much is it estimated to cost?

A detailed cost estimate will be prepared upon completion of the design and construction drawings. The preliminary estimate is approximately $5 million.

Female Juvenile Drop-In Center

The Courts have been working on establishing and opening a Female Juvenile Drop-In Center for a few years now.

Question: When will this center be open?

The Courts are currently preparing the leased site to house the new Drop-In Center for juvenile girls. In 2012, with the support of the President and Congress, the Courts identified and negotiated a lease for the facility, completed the architectural designs, and contracted for the internal construction of the center (i.e. converting an empty building shell to space for tutoring, counseling, and vocational training, restrooms, probation offices, etc.). The project is currently in the construction phase, with building permits received in April 2013. Construction is scheduled to take 11 months; accordingly, the Drop-In Center should open early next year.

Question: Please explain why having a facility such as this is so important to rehabilitating young females.

The girls Drop-In Center is critical to the Superior Court's innovative approach to meeting the unique needs of juvenile girls and, unfortunately, their rising need for rehabilitative services.

Historically, juvenile justice systems were designed for adolescent males, and most resources were dedicated to this population. Girls were typically diverted to child welfare and other social services systems. Only since the turn of the 21st century have resources been directed to reducing crime among juvenile girls. Literature on female adolescent delinquency suggests the need for a new approach to female offending, which has increased due to a combination of increased girl gang and crew activity and increased violent crime among girls (despite an overall reduction in juvenile crime).

In 2006, the D.C. Superior Court launched the Leaders of Today in Solidarity (LOTS) team to serve, monitor, and support court-involved adolescent females. Staff of the Family Court Social Services Division, the juvenile probation department for the District of Columbia, reviewed what little information was available on adolescent female delinquency and best practices in other jurisdictions and analyzed conceptual frameworks and theories to develop a probation model tailored to juvenile girls. The LOTS concept includes assignment of one probation officer of record to the girl throughout her involvement in Family Court; facilitation of a Family Group Conference (FGC) with the girl and her family to identify the family's strengths, weaknesses and needs and to complete a pre-trial services, support, and supervision plan; community service; gender-specific programming such as health and hygiene education, life-skills, peer-to-peer support groups, community outings, social networking etiquette, and mentoring. LOTS has become a best practice emulated by other juvenile probation departments.

The Balanced and Restorative Justice (BARJ) Drop-In Center for LOTS girls is critical to address delinquency among adolescents girls. The Court currently operates BARJ Drop-In Centers for juvenile boys in three of the four quadrants of the city. The results of the Centers are

dramatic, with recidivism at approximately 10%, less than half the national average of 25%. The Centers provide supervised activities, such as tutoring, counseling, recreation, vocational training, and community service, after school and on Saturdays. The LOTS Drop-In Center will provide a community-based venue, with a gender-specific design, for similar activities for girls to hold them accountable and help support them into adulthood and responsible citizenship. The Center will also enable the Court to work with the peers of court-involved girls to help reduce the number of girls entering the juvenile justice system.

Question: What percentage of the females enrolled in your programs end up committing crimes as adults?

Currently, this data is not available as it requires identifying and gathering data outputs from several adult criminal justice agencies. The Court is engaged in an effort, led by the Criminal Justice Coordinating Council (CJCC), to identify and begin capturing data on the number of juvenile girls entering adult criminal justice systems.

Question: How can the current program be improved upon?

The Court believes the creation of the BARJ Drop-In Center for LOTS girls will advance rehabilitation of these young people. The Court works to stay abreast of trends in juvenile crime and of best practices in other jurisdictions to find improvements that we can adopt. The Court also collaborates with District Government agencies to coordinate and improve services. For example, the Court has been working with the city's Department of Youth Rehabilitative Services (DYRS), which is responsible for detained juveniles, on two shelter homes (congregate care community-based homes) for pre-trial girls. Our objective is to bring the shelter home staff into the BARJ model to ensure continuity, enhance services and supervision, and reduce reliance on secure detention while maintaining public safety.

Collaboration with the Criminal Justice Coordinating Council (CJCC)

The Criminal Justice Coordinating Council is a voluntary forum for criminal justice agencies in the D.C. area that allows for collaboration on coordinating programs, implementing technologies and sharing information amongst its members. CSOSA and the D.C. Courts are both members of this council.

Question: How do you collaborate with the CJCC and its other members to uphold your priority of maintaining public safety in our Nation's capital?

The D.C. Courts, through the Superior Court, collaborate with the CJCC and its member agencies in a number of ways to reduce violent crime. The CJCC has set two goals to achieve this mission, and the Superior Court actively participates in a number of workgroups and committees to accomplish these goals.

The first goal is to improve data-driven services by increasing effective interagency collaboration and planning. The presiding judge of the Family Court co-chairs the Juvenile Justice Committee, which continues to serve as the executive committee for CJCC's juvenile activities such as

improving collaboration by utilizing data and sharing information, and identifying innovative programs and services to enhance the juvenile justice system. The Superior Court also works with partner agencies as part of the Juvenile Detention Alternatives Initiative, which is charged with identifying and supporting the implementation of alternative programs and services available to youth, and Juvenile STAT, which monitors juvenile cases that involve gun offenses. As part of the Reentry Committee, partner agencies collaborate to develop, update, and support the implementation of a reentry strategy for individuals being released from prison, with a focus on high-risk offenders. Finally, the Superior Court works with CJCC partners to develop treatment programs to address the needs of inmates and those who remain under supervision after release.

The CJCC's second goal is to improve criminal justice system operations, which requires interagency cooperation and information sharing. To support this goal, the Superior Court collaborates and shares data through the Justice Information System (JUSTIS). Second, the Papering Reform Committee works to eliminate in-person papering in most cases ("papering" is the process in which the prosecutor reviews the evidence gathered by a police officer to determine whether to initiate a criminal case in court) and to streamline records-sharing by establishing electronic collection and dissemination of arrest and prosecution reports across the criminal justice system. CJCC partners are developing a means to share information on mental health and substance abuse with criminal justice agencies. Finally, the Superior Court continues to collaborate with partners to maintain and exercise the interagency criminal justice plans, which provide a mechanism for partners to disseminate notifications quickly.

Question: Do you believe that collaborating on certain initiatives could save you expenses in the future?

Yes, initiatives such as the Justice Information System (JUSTIS) continue to save the Court and partner agencies expenses. JUSTIS allows partner agencies, including the Superior Court, to share automated information through one central location rather than requiring each agency to directly connect electronically with each other. By centralizing the flow of information, resources and time are saved.

Question: In what areas could you increase collaboration?

The Superior Court will continue to collaborate with all CJCC partner agencies on all the initiatives discussed above to reduce violent crime in the District.

Transitioning Offenders into Society

One of the most challenging obstacles offenders face after incarceration is transitioning back into society. CSOSA and the D.C. Courts offer a number of services (i.e. skills training, Fathering Court Initiative, etc.) that are specific to aiding this challenge.

Question: Please describe the services that D.C. Courts offer to offenders specific to their transition into society.

The D.C. Superior Court Fathering Court takes a problem-solving approach to the court-ordered child support cases of prisoners returning to the community, to help these fathers support their children, both financially and emotionally. The Fathering Court is voluntary and links participants with comprehensive social services provided primarily by the Executive Branch of the District Government and CSOSA. Services offered include parenting classes, employment training and counseling, job placement assistance, mentoring, intensive case management, continuing educational training, financial counseling, mental health assessment, and substance abuse treatment referral. In addition, to help them stay abreast of their child support obligations, Fathering Court participants are offered reduced child support orders that increase incrementally as they proceed through the curriculum, and any Temporary Assistance for Needy Families (TANF) arrearages can be reduced by 25% for graduates.

Question: How do you measure the success of these programs?

The success of the Fathering Court is measured in several ways:

(a) Payment of child support
(b) Participant relationships with minor children
(c) Recidivism
(d) Formal evaluation

Question: How successful have these programs been?

The Fathering Court has been very successful. Since it began in 2008, there have been 88 participants and 50 graduates, nearly all of whom actively participate in rearing their children, pay child support timely, are employed full-time, and have not re-offended. There are currently 29 fathers enrolled in the program.

(a) Payment of child support: Fathering Court participants have paid approximately $930,000 in child support.
(b) Relationships with minor children: Nearly 70% of Fathering Court participants have reconnected with their minor children and now have meaningful and constructive relationships with them (68 participants and 125 children).
(c) Recidivism: The recidivism rate of Fathering Court graduates is 6%, significantly lower than the typical rate of offenders transitioning back to society.
(d) Formal evaluation: The National Center for State Courts performed a process evaluation of the Fathering Court in 2009 and determined that the Fathering Court complied with "best practices" among similar programs.
(e) In September 2010, the Fathering Court was recognized as a "Bright Idea" by the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School of Government.

Financial Services and General Government Subcommittee
Hearing on the D.C. Courts and Court Services and Offender Supervision Agency

Questions for the Record for Nancy M. Ware, Director, Court Services and Offender Supervision Agency

Questions for the Record Submitted by Chairman Ander Crenshaw

Relocation of the 25 K St. Facility-

You have indicated the need for a new facility in North East that must be relocated due to an expiring lease.

Question: How much will this relocation cost?

One of the Community Supervision Program's(CSP) primary strategies is community supervision which includes close collaboration with community and law enforcement partners in decentralized supervision offices located in the neighborhoods where offenders live and work.

CSP's FY 2014 Budget requests a total of $8.108M to support relocation costs for up to four offender supervision field unit locations in the District of Columbia (D.C.) where leases are scheduled or expected to end and/or where conditions are not suitable for employees. Requested FY 2014 resources will support relocation for some of these locations. One of these field units is located at 25 K Street, NW, where 90 CSP staff perform direct offender supervision, substance abuse collection, and vocational/education services for approximately 3,100 offenders. In addition, 25 K Street serves as the location for most of our female-specific offender support services. Cost estimates received from General Services Administration (GSA) in December 2012 to relocate 25 K Street total $3.137M.

Question: Where are you in the process of relocation?

CSP's lease for 25 K Street, NW, ended January 2012 and has since been extended to a maximum of January 2015; The landlord plans to re-develop and will not enter into a long-term lease extension and may provide a 12-month notice for CSP to vacate the premises. CSP has worked closely with GSA to acquire replacement space in general proximity to 25 K Street in order to continue supervision and support services for offenders in this area of the city. We are also looking for space that is close to the Metro and central to all sections of the city. GSA concurs with CSP's approach to initiating the relocation process in a proactive manner rather than face a short, 12-month space acquisition and relocation funding timeline. However, this process cannot be completed until funding is secured.

Question: Assuming you have to relocate, how do you expect moving this facility will better protect the community and supervise offenders as opposed to renewing your lease at your current facility?

CSP would prefer to remain at the 25 K Street location but as discussed above, renewing the lease is not an option.. CSP and GSA are currently soliciting expressions of interest from building representatives of potential sites within the delineated area of 25 K Street.

Additional FY 2014 resources are required to fund the relocation of 25 K Street. In the last two fiscal years, CSP has already instituted significant reductions to core, mission-critical public safety programs due to budget cuts. Due to the unavoidable nature of the 25 K Street relocation, CSP will be faced with enacting additional cuts to public safety programs and possibly ending our community supervision field unit presence in this area of the city if additional FY 2014 funding is not provided. Currently, the 25 K Street location serves as CSP's as the location for most of our female-specific offender supervision programs. Additionally, this field unit houses approximately 90 CSP staff performing direct offender supervision, substance abuse collection, educational/vocational services, mental health screenings, and Day Reporting Center programming for approximately 3,100 offenders presently assigned to this location. Upon relocation to another facility in the vicinity, CSP intends to continue offering these same offender programs and services to clients that are assigned to this field unit or reside in the surrounding community.

Officer to Offender Ratios-

As of your most current figure provided to the committee, you noted that you operate under a 56:1 offender to officer average ratio.

Question: How does this ratio compare to other cities?

The 56:1 ratio provided to the Committee is reflective of our on-board officer to offender caseload ratio as of September 30, 2012.

While there are no national statistics on probation and parole caseloads, the American Probation and Parole Association (APPA) has adopted and recommended a caseload of 50:1 for moderate to high risk cases. [1]

Additionally, in 2009 the Philadelphia Probation and Parole Department reported an average general supervision caseload of 160:1[1]. In April 2012, Maryland's Department of Public Safety and Correctional Services reported an average supervision caseload statewide of 89:1. General supervision cases in Baltimore averaged 87:1 at this time[2]. It is difficult to know how closely general supervision practices in these jurisdictions match those of CSOSA.

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[1] 'Caseload Standards for Probation and Parole', American Probation and Parole Association, September 2006.

[1] http://courts.phila.gov/pdf/site/appd.pdf

[2] http://www.statestat.maryland.gov/reports/20120426_DPSCS_Template.pdf

It should be noted that supervision requirements (i.e. reporting, drug testing, etc) vary widely from jurisdiction to jurisdiction. CSOSA prides itself on having one of the most comprehensive supervision and support systems available.

Question: What percentage of offenders under your supervision committed crimes again?

We report recidivism statistics using both arrest and incarceration data. The recidivism statistics based on arrest consider arrests in D.C., Maryland, and Virginia occurring during the fiscal year. Since not all offenders were on supervision for the entire fiscal year, the timeframe available for arrest varies based on the amount of time they were on supervision during the fiscal year. The recidivism statistics based on incarceration follow a cohort of cases for the same period of time for each offender, three years following the start date of their supervision, and uses a national database of incarcerated offenders.

In FY 2011, 26.7% of the total supervision population was rearrested. In FY 2012, 24.1% of the total supervision population was rearrested.

Within three years of the start of their supervision, 24.8% of offenders who began supervision with CSOSA in FY 2008 recidivated (incarcerated).

Question: How does this compare to recidivism rates in other cities?

Although data is not available for other jurisdictions, the most recent national data on offenders released from prison from the Bureau of Justice Statistics (2002) indicated that 52% of offenders were returned to prison (reincarcerated) for a new offense or technical violation within 36 months[3]. A comparable CSOSA population includes parolees and supervised releases with a combined recidivism rate of 31%.

CSOSA Investments-

Each year your agency spends millions of dollars on GPS monitoring, drug testing and mental health treatment.

Question: What determines when to use these supervision techniques?

CSOSA's supervision activities are assessment-driven, based on special conditions imposed by the releasing authority, and guided by policy and practice.

The placement of offenders on GPS monitoring is guided by CSOSA's GPS policy. Offenders are placed on GPS monitoring if they have a special condition for GPS imposed by the releasing authority[1]; are assessed using CSOSA's validated AUTO Screener instrument and determined to be high risk for a new weapons, violence or sex offense; are being sanctioned in response to non-compliant behavior; and in collaboration with law enforcement on targeted crime initiatives.

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[3] http://www.bjs.gov/content/pub/pdf/rpr94.pdf

[1] Approximately 2% of offenders on GPS monitoring are placed on monitoring as a special condition imposed by the releasing authority

CSOSA has a zero-tolerance drug testing policy and uses drug test results to ensure that offenders are and remain in compliance with their general conditions of release. Positive drug test results often are an early indicator of relapse to drugs and/or new criminal activity, requiring closer supervision of offenders in order to bring them into compliance. All offenders coming under supervision are drug tested in accordance with CSOSA's drug testing policy and protocol. Offenders who consistently test negative for drugs are moved to a reduced drug testing schedule and can be placed in random drug testing. Conversely, there are graduated responses for offenders who test positive for drugs. These include referrals to substance abuse treatment, increased drug testing, and increased supervision reporting, in order assist them in successfully completing their terms of supervision.

Offenders are placed into mental health treatment if the releasing authority mandates mental health treatment as a special condition of supervision. In addition, an offender may be placed into mental health treatment based on the results of a mental health evaluation. A mental health evaluation may be specified by the releasing authority as a special condition, may be recommended by CSOSA's AUTO Screener risk and needs assessment instrument, or may be ordered by the Community Supervision Officer (CSO) during the course of supervision. If the evaluation results recommend mental health treatment, the CSO will make a mental health treatment referral for the offender.

Question: How do you know that spending in these areas is successful and effective?

Regular drug testing allows CSOSA to monitor offender drug use on an ongoing basis. Our research indicates that offenders who were prescribed and placed in a substance abuse treatment program[2], they were less likely to be classified as a persistent drug user[3] than those who did not.

CSP dedicates specialized mental health supervision teams to provide intensive case management services to special-needs male and female offenders with medically diagnosed mental health conditions, and CSP provides assessment and referral services for those offenders with mental health needs. Data from other jurisdictions suggest that parolees and supervised releases with mental health needs recidivate at rates that range between 45% and 70%. At CSOSA, the recidivism rate for parolees and supervised releases with mental health needs is approximately 43.6%.

Regarding GPS use, please see the response below.

Question: Could additional spending in these areas reduce the need for additional officers?

Additional spending on GPS, drug testing, and mental health treatment would not reduce the need for additional officers. GPS, drug testing, and mental health treatment cannot replace

[2] Treatment program continuum is defined as two or more substance abuse treatments in a year
[3] Persistent drug users are defined as having three or more positive drug tests (excluding alcohol) measured 180 days after discharging from the continuum

supervision. GPS and drug testing are tools used by the CSOs to enhance supervision activities, to provide appropriate interventions, to help ensure success rates, to monitor offender compliance, and to hold offenders accountable. These supervision tools involve a highly labor-intensive process including referrals, monitoring, and appropriate and timely follow-up in response to non-compliant behavior.

Question: Are offenders on GPS monitoring less likely to commit crimes?

CSOSA's Office of Research and Evaluation performed a review of offenders who were placed on GPS monitoring for at least sixty successive days in FYs 2011 and 2012, comparing violations of supervision conditions and rearrests in the sixty days before GPS activation to the sixty days after GPS activation for those offenders. An examination of drug and non-drug (excluding GPS) violations showed that non-drug violations, which represented a small portion of overall violations, decreased while offenders were being monitored in FYs 2011 and 2012.[4] An analysis of violations and rearrests of offenders on GPS demonstrated a decrease in both violations and rearrests

Female-Specific and Juvenile Offender Services

Female offenders can offer unique issues and challenges within the social services your agency provides.

Question: What kind of feedback do you get from your female offenders?

Anecdotal feedback of female offenders indicated the program made a tremendous difference in their lives and helped them not return to using drugs and going back to jail or prison. Some women also talked about how the program helped them channel their emotions and anger, and relate better to their family members, thereby improving family reunification. By the close of fiscal year 2013,CSOSA has plans to design and implement an exit survey for all offenders, male and female, completing supervision.

Question: Are female recidivism rates lower than male?

Yes, recidivism rates for D.C. female offenders are lower than their male counterparts.

In FY 2012, 3,994 (16.9%) offenders on CSOSA's caseload were female and 19,586 were male. Of those female offenders, 7.9% were revoked to incarceration (recidivated) in FY2012. In comparison, 10.4% of male offenders on CSOSA caseload in FY2012 were revoked to incarceration (recidivated).

It is important to note that factors such as physical or sexual abuse history, mental health problems, substance abuse and other issues may increase the likelihood that female (or male) offenders may recidivate.

[4] Our methodology included an assessment of violations 60 days prior to and 60 days following GPS installation. Specifically, we compared the mean number of violations (drug and non-drug) an offender accumulated before GPS monitoring to the number of violations they accumulated while on GPS.

Question: If so, what could you offer your male offenders so that they will have lower recidivism rates?

Following in the example of the female and other specialized populations, CSP is continuing to focus resouces on the highest risk offenders. Currently, a pilot intervention has been launched for a subset of the highest risk offenders – those 25 and under in an attempt to reduce recidivism amongst our young adult offenders. This strategy builds upon recent efforts to reallocate and focus staff resources to increase specialized supervision and support programming for our highest risk and highest need offenders. While we anticipate positive outcomes from this strategic shift in existing resources, CSP continues to be concerned about dwindling resources to support housing, substance-abuse, and job placement. Without the ability to expand to all of our field sites proven programming, such as our Day Reporting Center (DRC) Program or our Violence Reduction Program, stabalizing offenders, particularly male offenders, under CSP's supervision will remain challenging.

Question: Are you collaborating with the District of Columbia Court System on monitoring techniques that could improve supervision of juveniles?

CSOSA supervises some offenders who also are under the supervision of the Department of Youth Rehabilitation Services (DYRS) and the DC Superior Court Social Services Division. To properly address these "dual supervision cases," CSOSA entered into a Memorandum of Agreement (MOA) between the Criminal Justice Coordinating Council (CJCC), D.C. Department of Youth Rehabilitation Services (DYRS), the Superior Court of the District of Columbia's Court Social Services Division (CSS), and the Pretrial Services Agency (PSA). It constitutes agreement by the parties as to the procedures for managing the cases of persons who have matters simultaneously pending in both the Family Court and the Criminal Division of the Superior Court for the District of Columbia.

To address the specific needs of its young male adult population, CSOSA created in April 2013 two specialized, pilot supervision teams to supervise young, male adults under the age of 25. These teams are piloting an integrated case management approach with a heavy emphasis on expedited assessments, cognitive behavioral interventions, and motivational interviewing techniques to assist these offenders in successfully completing supervision and reduce recidivism.

Collaboration with the Criminal Justice Coordinating Council (CJCC)

The Criminal Justice Coordinating Council is a voluntary forum for criminal justice agencies in the D.C. area that allows for collaboration on coordinating programs, implementing technologies and sharing information amongst its members. CSOSA and the D.C. Courts are both members of this council. Director Ware, as the former commissioner of the CJCC, you offer a unique perspective that could offer some useful insight to other members.

Question: How do you collaborate with the CJCC and its other members (particularly the D.C. Courts) to uphold your priority of maintaining public safety in our Nation's capital?

As you are aware, the CJCC plays a significant role in helping to improve public safety in the District of Columbia. Both CSP and PSA are active permanent members of the CJCC, along with other local and Federal law enforcement entities, including the Federal Bureau of Prisons, the United States Marshals Service, the Metropolitan Police Department, the US Attorneys Office for the District of Columbia, the US Parole Commission, the D.C. Department of Corrections, the D.C. Public Defender Service, the D.C. Superior Court, the Attorney General for the District of Columbia and the D.C. Department of Youth Rehabilitation Services.

Collectively, the aforementioned entities work to share pertinent information on D.C. criminal justice trends, best practices in crime prevention, and strategies for combating substance abuse and treating mental health issues. Beyond our participation in the CJCC, CSOSA managers presently play a significant leadership role in the CJCC by serving as co-chairs of the CJCC's Reentry Taskforce as well as its the Substance Abuse Treatment and Mental Health Services Integration Taskforce.

Furthermore, CSOSA, like many of our partner entities, works through the CJCC to plan and conduct issue-oriented conferences, symposiums and community summits. In February of 2013, CSOSA, along with the CJCC and its permanent members, spearheaded a symposium entitled, "Synthetic Drugs: Myths, Facts, and Strategies". The Symposium brought together local and national experts to raise awareness about the proliferation of synthetic drug use in the District of Columbia; discuss how synthetic drugs affect the mind and body; report on the prevalence and impact of synthetic drugs; and to examine policy efforts underway to curtail usage of emerging designer synthetic drugs. In addition, the symposium was the beginning of a dialogue on the local response strategies.

Another example of the collaborative work CSOSA performs in conjunction with the CJCC and its members involves reliance on the CJCC's Justice Information System (JUSTIS). JUSTIS is a web-based application tool that provides partner entities access to criminal justice related information from multiple sources at the same time. A key aspect of JUSTIS is that it relies entirely on the voluntary sharing of information from the various contributing D.C. public safety partners, which helps to make it a cost effective and useful resource for exchanging adult criminal case information from arrest through prosecution and post-conviction release.

CSOSA also works closely with the CJCC and our area law enforcement partners in participating in the GunStat initiative, which is an additional collaborative information sharing process focused on tracking local gun cases from arrest to prosecution. GunStat also allows CSOSA and D.C. law enforcement agencies to identify repeat offender, follow crime treands, and create law enforcement strategies that will prevent gun-related crimes in the future. CSP and PSA have participated in monthly GunStat sessions that were designed to identify the most dangerous repeat gun offenders and determine how to focus the joint resources of CJCC members on those offenders; develop and update GunStat eligibility criteria; discuss and analyze relevant trends, policies and initiatives that impact gun-related crimes.

Additionally, CSOSA, including both CSP and PSA, works collaboratively with the D.C. Courts on a myriad of fronts.

For instance, the D.C. Courts and PSA work jointly in administering the elements of the Superior Court Drug Intervention Program, also known as Drug Court. In short, the Drug Court is a voluntary substance abuse treatment and supervision program for eligible defendants with non-violent misdemeanors and felony offenses. Each defendant participating in Drug Court receives treatment and is assigned a Pretrial Services Officer (PSO) with whom he/she meets regularly.

In addition to providing one-on-one counseling, the supervising PSO monitors and guides the defendant through both the supervision and treatment aspects of the program. Defendants are required to report for all treatment appointments and activities as directed by the program.. Upon successful completion of the Drug Court Program within five to nine months, a defendant's case is dismissed or for those with a felony offense, the chances of receiving probation are greatly enhanced. However, it is important to note that final sentencing decisions for Drug Court Program participants fall to the sole discretion of D.C. Superior Court. In conducting the Drug Court Program, PSA and the D.C. Courts work hand in hand in sharing defendant information, discussing service delivery challenges, establishing performance benchmarks and conducting program evaluations.

Also, CSOSA and the D.C. Courts work jointly on mental health related cases and ensuring that offenders complete their assigned community service requirements. For example, the Mental Health Community Court of the Superior Court of the District of Columbia (MHCC) began hearing cases in November of 2007 to address the needs of an increasing number of mentally ill defendants charged with misdemeanors. In October 2010, MHCC also began hearing non-violent felony cases. The main objective behind this collaborative effort has been to identify defendants experiencing a mental illness, including some defendants with a co-occurring substance abuse disorder, and to connect defendants with appropriate treatment services. If compliance with these services is maintained, as well as the other conditions set by the court, the criminal charges may be dismissed or reduced.

CSOSA assumes supervision responsibility for those cases that are sentenced and ordered to probation. This effort was expanded on October 9, 2012, to include probation review hearings and written progress reports. These activities allow the Judge to address issues that could lead to revocation proceedings, but provide positive reinforcement for supervision and treatment plan compliance as well. To date, 31 probation review hearings have been calendared.

Additionally, CSP also works closely with the D.C. Superior Court to ensure that offenders satisfy their court-ordered offender community service requirements. Community Service placements are closely monitored work assignments in which offenders perform a service, without pay, for a prescribed number of hours as a part of restitution to the community. Community service can be ordered by a judge, the United States Parole Commission, or by CSP as a sanction for non-compliant behavior. In FY 2012, CSP made 1,666 Community Service placements. These placements are made possible through collaborations with local government agencies and non-profit organizations that have signed agreements to serve as Community Service referral sites.

Question: Do you believe that collaborating on certain initiatives could save you expenses in the future?

CSOSA agrees that enhanced collaboration amongst local D.C. area law enforcement and criminal justice partners is a cost effective and common sense approach to improving public safety in the Nation's Capital. In an era, where many criminal justice agencies, on the local, state and Federal levels are experiencing reductions in budgetary resources and support, greater collaboration and improved partnerships are essential elements to present day crime fighting strategies. This is especially true, if entities, such as CSP and PSA, are going to be able to prevent increases in offender and defendant rearrests and recidivism rates that may come as a result of recent decreases in our agency's annual budget funding levels. These necessary resources must be available to support the successful completion of supervision.

That said, CSP and PSA continue to look at ways to collaborate and partner both internally and externally, in order to bring about greater efficiencies. For example, CSP and PSA are currently exploring opportunities to enter into joint ventures to enhance our information technology systems and security, provide certain human resource functions and staff training and better share and utilize client data and information.

In line with our strategic plan, CSOSA promises to continue focusing on building and maintaining partnerships with not only law enforcement entities, but also with community and faith based organizations in order to carry out our mission of improving public safety, preventing crime, reducing recidivism and supporting the fair administration of justice in close collaboration with the Community.

Question: In what areas could increased collaboration be beneficial?

In addition to the aforementioned areas, greater partnering with agencies responsible for employment, treatment and transitional housing are just a few areas in which CSOSA hopes to increase collaboration. CSOSA has found that being able assist our client population with securing a job, finding a place to live and gaining access to quality treatment for substance abuse, mental health, domestic violence and sexual offenses has a profound impact on stabilizing them, which in turn reduces offender and defendant recidivism rates, while simultaneously increasing their chances of successfully completing supervision and becoming productive members of society.

Additionally, CSOSA would like to pursue increased data sharing by strengthening our Cross-Border Initiative with law enforcement authorities in Maryland and Virginia. At the present time, CSOSA works closely with our regional partners to share arrests and crime data on those offenders under our supervision. While data sharing between CSOSA and the state of Maryland has been streamlined and solidified over the years, shortcomings continue to exist with regards to our ability to receive and extract routine offender rearrest information from localities in Virginia.

Similarly, CSOSA has sought to improve our data sharing arrangements and partnerships with other supervision entities by becoming a member of The Mid-Atlantic Regional Information Sharing Initiative (MARIS). The newly created MARIS is designed to make inter-state justice information sharing (JIS) a secure, effective, efficient, simple and practical process for each Member state. The Northeast states that have been involved in planning this initiative include: the District of Columbia, Delaware, New Jersey, West Virginia, Pennsylvania, New York,

Maryland and Virginia. It is expected that other states will join once the governance structure and policies are implemented. The National Criminal Justice Association has been guiding the effort.

Finally, CSOSA could expand collaboration with the US Marshal Service in operation of CSOSA's Warrant team, which expedites the warrant execution services for those offenders found to be in violation of their terms of supervision. The Warrant Team, in collaboration with the US Marshals Service, focuses specifically on supervising and investigating warrant cases that have been in an outstanding status greater than 90 days and share important information that helps to eliminate duplication and create a more efficient process for locating and serving warrants for our offenders. As a result of this collaborative effort, the number of our offenders in warrant status decreased 22 percent from September 2010 to September 2012.

Transitioning Offenders into Society-

One of the most challenging obstacles offenders face after incarceration is transitioning back into society. CSOSA offers a number of services (i.e. skills training, re-entrant housing, mental health rehabilitation, etc.) that are specific to aiding this challenge.

Question: Please describe the services that CSOSA offers to offenders specific to their transition into society.

Approximately 9,500 offenders enter CSP supervision each year; and one quarter, or 2,200 individuals are released from incarceration in a Federal Bureau of Prisons (BOP) facility on parole or supervised release. In FY 2012, approximately 55 percent of prison releases transitioned directly from prison to CSP supervision, bypassing a BOP Residential Re-entry Center (also known as halfway house).

CSP's challenge in effectively supervising and reducing recidivism among offender re-entrants is substantial. The total number of offenders entering CSP supervision in FY 2012 were characterized by the following:

- 84.3 percent self-reported having a history of substance use;
- 76.0 percent were unemployed (self-reported at intake);
- 40.8 percent reported having less than a high school diploma or GED;
- 37.3 percent had diagnosed or self-reported mental health issues;
- 25.2 percent were aged 25 or younger; and
- 9.4 percent reported that their living arrangement was unstable at intake.

The prospect for successful re-entry is greatly increased when planning begins during the period of incarceration. Prior to their release, CSP performs Community Resource Day (CRD) presentations on D.C. programs and services available to inmates housed at BOP facilities. CRD includes presentations covering housing, health care, education and employment by numerous Federal, D.C. Government, and local organizations. . Since this program began in 2003, the number of

participating prisons has grown from one to 18 in February 2013. All the participating institutions are located within the Federal Bureau of Prisons' Mid-Atlantic and Northeast Regions.

CSP employs three specialized Transitional Intervention for Parole Supervision (TIPS) teams that prepare CSOSA transitional parole supervision plans for offenders placed in BOP Residential Re-entry Centers (halfway houses) pending release to the community (one team) or offenders who are directly transitioning from an institution to community-based supervision (two teams). These plans include the offender's history and an assessment of actions necessary for a successful return to the community and are essential to the supervisory CSO upon the offender's intake into CSOSA supervision.

Upon intake to CSOSA supervision, CSP conducts Mass Orientation programs for new offenders. Mass Orientation programs are conducted at CSP field sites in collaboration with our community partners to provide new offenders with knowledge and resources available to successfully complete their term of supervision.

In 2006, CSP opened the Re-entry and Sanctions Center (RSC) at Karrick Hall, in Southeast D.C. Its mission is to provide intensive assessment and re-integration programming for high-risk men and women with histories of substance abuse returning from prison and beginning community supervision as well as residential sanctions for those already on supervision who violate their community release conditions. The RSC is a 102 bed facility, with six units, including two for men with co-occurring mental health and substance abuse disorders and one for dually diagnosed women. The RSC provides a 28-day holistic and multi-disciplinary program including clinical assessments, treatment readiness and behavioral therapy. Upon completion of the RSC program, many residents are referred to contract residential or outpatient substance abuse treatment programs and/or contract transitional housing. Unfortunately, many of these treatment services have been reduced due to budget constraints.

CSP's limited funding for offender contract substance abuse treatment, transitional housing and mental health assessments has been further reduced due to the budget reductions, As a result, offenders may be referred to the District of Columbia Government for these services. CSP also offers offender support services, programs and mentoring for offenders as part of our Faith-Based Program; however, this program will be severely reduced later this fiscal year due to budget pressures.

CSP works with returning citizens to support their successful re-entry with educational, vocational and other specialized assessment services. Based on the TIPS release plan and the advice of the supervising CSO, returning men and women are offered referrals or enrollment in educational, vocational and other program supports offered by CSP through our Vocational Opportunities for Training, Education and Employment (VOTEE) unit. VOTEE provides adult basic education and GED preparation courses and prepares offenders for job readiness training, community-based vocational and rehabilitative programs, and job search/placement and retention assistance. However, CSP cannot meet the education and vocational needs of all of our population. Therefore, we work very closely with other District entities to support employment assistance.

CSP plays a leading role in offender re-entry within the District of Columbia and works closely with the D.C. Criminal Justice Coordinating Council (CJCC) and the D.C. Office of Returning Citizens (ORCA) on local re-entry issues. CSP employs numerous services and interventions to ensure offenders have the support they require upon their return to the community. On a national level, CSP is one of 19 agencies that are members of the Federal Interagency Re-entry Council

Question: How do you measure the success of these programs?

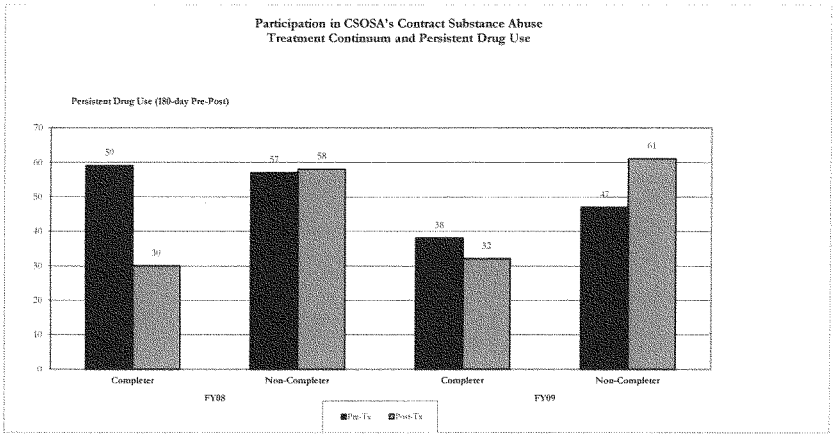
CSOSA employs a variety of methods to track program performance and to evaluate the effectiveness of services offered. At the agency level, CSOSA's Office of Research and Evaluation (ORE) conducts reviews of recidivism rates and case closures among probation, parole, and supervised release offenders. ORE also conducts analyses on intensive measures, such as violations, program completion, job referral and job placement rates. Studies to evaluate the efficacy of drug testing and substance abuse treatment programs are also conducted

Additionally, the quality of CSP's drug prevention and treatment programs and services are also subjected to external review by private sector research entities, like the Institute for Behavior and Health, Inc. and other Federal Government agencies such as the Office of National Drug Control Policy and the Government Accountability Office. However, because each high risk offender presents a combination of needs and may participate in a combination of programs, no program in isolation can be directly correlated with supervision outcomes.

Question: How successful have these programs been?

Substance Abuse Treatment Services

CSOSA's Office of Research and Evaluation performed a limited review examining the extent to which completion of full substance abuse treatment services reduced offender drug use. CSOSA's review showed that offenders who completed full substance abuse treatment services decreased their drug use.

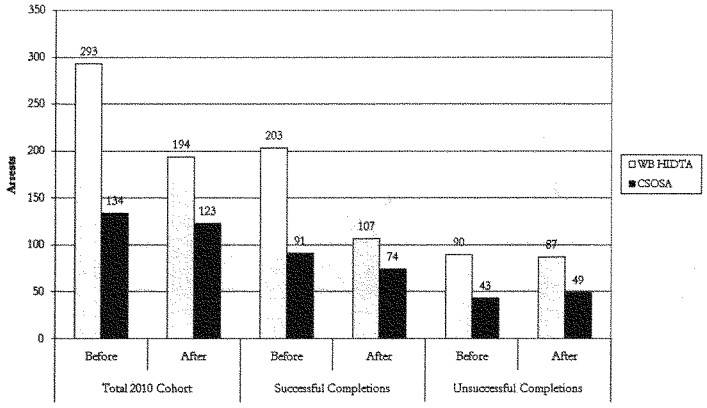


RSC Services

A study by the Institute for Behavior and Health[5] found that CSOSA offenders and defendants who participated in the Agency's Re-entry and Sanctions Center (RSC) program and successfully completed post –RSC drug treatment funded by the Washington/Baltimore High Intensity Drug Trafficking Area (W/B HIDTA) were less likely to be arrested after completing the program. CSOSA is one of nine jurisdictions within the W/B HIDTA area that received grant funding to support drug treatment in calendar year 2010. CSOSA uses W/B HIDTA funding to support post-RSC contract treatment for offenders/defendants meeting HIDTA eligibility criteria. In 2010, the number of CSOSA offenders/defendants arrested dropped 8.2 one year following HIDTA treatment. Those offenders/defendants who successfully completed the treatment program experienced an 18.7 percent decrease in arrest one after treatment. The number of CSOSA offenders and defendants who did not successfully complete the post-RSC treatment program actually experienced an increase in arrest after treatment.

[5] The Effect of W/B HIDTA-Funded Substance Abuse Treatment on Arrest Rates of Criminals Leaving Treatment in Calendar Year 2010. Institute for Behavior and Health, Inc., June 4, 2012.

Individuals Arrested One-Year Before and One-Year After Completing Treatment Funded by Washington/Baltimore HIDTA (2010 Cohort)



SRTP Services

The SRTP provides an alternative placement for DC Code offenders on parole or supervised release who face a revocation hearing due to illegal drug use, other technical and, in some cases, new criminal charges. Upon an offender's successful completion of the program, the USPC reinstates the offender to parole or supervised release supervision without revocation.

The SRTP Pilot Program operated from September 2009 through July 2012. During that time period 113 offenders completed the jail-based portion of SRTP, returned to the community, and received reintegration support services provided by CSOSA. When the jail-based and reintegration services are combined, the core SRTP intervention curriculum consists of 180 days of residential substance abuse and criminal conduct intervention, 90 days of transitional housing, and 54 sessions of out-patient services. Contained within this continuum of service are programming and case management to provide linkage to mental health services (if needed), mentoring, skill development, education, and job placement support (often provided by VOTEE).

Of the 113 offenders who returned to the community following 180 days of jail-based treatment (data as of March 2013), 34% were
revoked to incarceration.
Offenders who completed the core continuum were three times less likely to experience revocation than those who did not.

Continuum Status	Offenders	Revoked	Pct Offenders Revoked
Completed	39	5	13%

Did not complete	74	33	45%
Grand Total	**113**	**38**	**34%**

Likewise, offenders who completed the core continuum were nearly 50 percent more likely to find employment than those who did not.

Continuum Status	Offenders	Found Employment	Pct Offenders Revoked
Completed	39	28	72%
Did not complete	74	38	51%
Grand Total	**113**	**66**	**58%**

Question: Have these programs resulted in lower recidivism rates?

Because the methodologies for measuring outcomes of the aforementioned programs vary, a comparison of recidivism rates based specifically on these individual programs has not been conducted. Nonetheless, CSP does routinely track and report on overall offender recidivism rates. CSP defines recidivism as the loss of liberty resulting from revocation for a new conviction and/or for violating release conditions. In measuring recidivism rates, CSP looks at the percentage of our Total Supervised Population re-incarcerated in a given fiscal year.

CSP examines longitudinal recidivism rates amongst its offender population by employing a methodology that tracks a sample of offenders over time and examines their cumulative incidence of conviction and revocation to incarceration (i.e. recidivism) for 36 months after the start of supervision. [6]

As the following chart illustrates, the conviction rates for all supervision types stayed in the 13%-14% range, which represents a decline in revocations to incarceration. The study also indicated that revocations were down across all supervision types.

[6] In our 2008 recidivism report, offenders in the sample group started supervision under CSP in 2004 and were randomly selected by supervision type to mirror our total supervision population. For these studies, CSP obtains offender arrest and conviction data from the Federal Bureau of Investigation, and offender re-incarceration data from our internal Supervision Management and Automated Record Tracking System (SMART).

In our subsequent recidivism studies, CSP tracked three separate cohorts of offenders entering supervision in FYs 2005, 2006, and 2007. Each cohort was tracked for three years following the start of supervision and all supervision types were included in the study: parole, supervised release, probation, civil protection order (CPO), and deferred sentence agreements (DSA). Revocations to incarceration data came from SMART; arrests and convictions data came from the Federal Bureau of Investigation's National Crime Information Center (NCIC) database.

Percent of CSP Offenders Convicted, and Revoked to Incarceration within Three Years of Supervision Start, Entry Cohort Years 2005-2007

	2005	2006	2007
	n=9,780	*n=9,596*	*n=9,901*
Convictions	**13.5**	**13.3**	**14.0**
Parole	17.3	14.5	15.2
Supervised Release	26.4	24.5	24.2
Probation	11.3	11.1	11.6
CPO	9.8	8.8	11.4
DSA	1.9	3.5	3.3
Revocations to Incarceration	**28.3**	**28.7**	**25.5**
Parole	42.5	41.3	31.7
Supervised Release	42.1	45.6	38.6
Probation	25.3	24.7	22.8
CPO	1.0	2.3	1.6
DSA	3.5	6.3	7.3

WEDNESDAY, MARCH 20, 2013.

THE JUDICIARY

WITNESSES

HON. JULIA S. GIBBONS, CHAIR, COMMITTEE ON THE BUDGET, JUDICIAL CONFERENCE OF THE UNITED STATES

HON. THOMAS F. HOGAN, DIRECTOR, ADMINISTRATIVE OFFICE, UNITED STATES COURTS

CHAIRMAN CRENSHAW'S OPENING STATEMENT

Mr. CRENSHAW. Well, it is 10 o'clock, so I will call the hearing to order. Good morning everyone. Judge Gibbons, Judge Hogan, thank you for appearing before the subcommittee today. Judge Gibbons, this is your ninth time that you have come before our subcommittee, and so we appreciate the fact that you are here. Welcome back to Judge Hogan. It is only his second time. But we are glad you are both here.

Having a fair and independent Judiciary is a cornerstone of our democratic system of government. The job of the third branch is one of great importance, responsible for resolving criminal, civil and bankruptcy disputes. The courts must have the trust and respect of all our citizens. In addition, the Judiciary's probation and pretrial service officers perform a critical public safety mission by supervising more than 200,000 offenders and defendants living in our communities.

I want to applaud the Judiciary for submitting its fiscal year 2014 budget request in a timely and sensible manner. It is disappointing and a little bit frustrating that the Executive Branch has yet to submit its budget, but I think it is time that they take seriously their obligation to the budget process. Congress must do its work, and we on the Appropriations Committee are committed to writing thoughtful spending bills in regular order. We appreciate that fact that you at the Judiciary are also committed to your role in this process.

As you know, the Federal Government continues to operate in an environment of limited resources; however, we are going to try to ensure that you have the resources needed to accomplish your important mission.

Over the past few years, you and your staff have worked closely with us to ensure that the Judiciary receives increases to address only your most critical needs, and I thank you for your efforts to reduce costs during these difficult times.

The Judiciary's budget request this year proposes an increase of $180 million, or about 2.6 percent above last year's. And I know that this is one of the smallest requests that you have ever made in the past few decades, and it is still going to be tough because of the fiscal situation we find ourselves in. So I want to work with

you and our ranking member, Mr. Serrano, to identify the savings that you are able to make and yet still provide—we want to make sure the courts have the resources necessary to fulfill your constitutional duties.

So with that, I would like to recognize my good friend and colleague, the ranking member, Mr. Serrano.

MR. SERRANO'S OPENING STATEMENT

Mr. SERRANO. Thank you, Mr. Chairman.

And we thank you for being before us, Judge Hogan you for the second time. And next year Judge Hogan you get a 10-year pin. It is something the Chairman is going to start doing pretty soon.

Judge Gibbons and Judge Hogan, you come here at a difficult time for the Federal judiciary, in large part due to sequestration. Most people do not realize that when we discuss the Federal Judiciary, we are not just talking about funding for judges and trials, we are also discussing funding for Federal public defenders, for court security, for free trial services, and for probation services for those released from Federal prison.

The programs run by our Federal Judiciary really extend outside of the courtroom, which means that cuts to the judiciary's budget do not just affect litigants, but many of our communities as well. Unfortunately, as a result of sequestration, the Federal Judiciary will have to absorb an almost $350 million cut to your fiscal year 2013 budget.

In a letter sent to Chairman Crenshaw and to myself, Judge Hogan detailed the negative impact that these cuts will have on the Federal judiciary's operations. Among other things, there will be a 20 percent cut to drug treatment and mental health programs, there will be a 30 percent cut in court security funding, there will be fewer probation officers, and there will be longer delays in cases going to trial.

I know a lot of members like to think of sequestration as an abstract math problem, but it is one that has real world impacts. As I told Justices Kennedy and Breyer when they appeared before the subcommittee last week, I am particularly worried about our Federal public defender program, where layoffs have occurred prior to sequestration and show no signs of abating.

Additional funding reductions caused by the sequester will undoubtedly force further difficult choices and undermine the ability of our Federal public defenders to do their utmost to help their clients. I am concerned that we are moving towards a troubling scenario in which our constitutionally mandated duty to provide eligible criminal defendants with legal counsel is substantially obstructed by a lack of funding.

Our judicial system is the envy of countries around the world because of its fairness, its efficiency, and the access we all have to it. I hope that those notable features of our system are not undermined by the sequester. Unfortunately, I am fearful that they will be.

Judge Hogan and Judge Gibbons, thank you for being here today. I look forward to discussing the sequester and other issues with you.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. CRENSHAW. So now we will recognize Judge Gibbons. If you could make an opening statement, keep it in the neighborhood of 5 minutes. Your written statement will be included in the record.

JUDGE GIBBONS' OPENING STATEMENT

Judge GIBBONS. Thank you. Chairman Crenshaw, Representative Serrano and members of the committee, I am Julia Gibbons, a judge on the Sixth Circuit Court of Appeals and Chair of the Judicial Conference Committee on the Budget. As has been mentioned, with me is Judge Tom Hogan, who is the Director of the Administrative Office of the U.S. Courts.

Mr. Chairman, we appreciate your taking the time to meet with us last week in advance of the hearing. As the chair alluded, I have been here several times, and I come before you today more concerned than ever about the financial situation facing the third branch of government and how that will impact our ability to properly administer justice. The 5 percent across-the-board sequestration cuts that took effect March 1 do reduce judiciary funding by nearly $350 million below current levels. These cuts will have a devastating impact on Federal court operations nationwide.

We believe we have done all we can do to minimize the impact of sequestration, but a cut of this magnitude, particularly so late in the fiscal year, will affect every aspect of court operations and impact the general public, as well as individuals and businesses looking for relief in the courts.

In February, the Executive Committee of the Judicial Conference finalized a number of emergency measures to deal with sequestration, and we are now implementing those measures. These emergency measures are unsustainable, difficult and painful to implement. The Federal court system in this country cannot continue to operate at sequestration funding levels without seriously compromising the constitutional mission of the Federal courts. The judiciary will phase in the cuts, but the impacts will be real and harmful to the citizens served by the courts.

The courts operate under a decentralized management system, so each court will decide exactly how to implement the funding cuts, but we estimate that on a national basis, as many as 2,000 employees in the courts could be laid off this fiscal year or face furloughs for 1 day a pay period, resulting in a 10 percent pay cut. These staffing reductions would be in addition to the loss of over 1,800 court staff over the last 18 months.

Sequestration will impact public safety, because there will be fewer probation officers to supervise criminal offenders released in our communities. There will be a 30 percent cut in funding for court security systems and equipment, and court security officers will be required to work reduced hours. This creates security vulnerabilities throughout the Federal court system.

Our Defender Services program is particularly hard hit, and we currently project significant staff furloughs in that program, as well as lengthy delays in processing payments to private attorneys appointed under the Criminal Justice Act. These cuts will affect the judiciary's ability to provide qualified defense counsel to indigent defendants. As many recent news articles have noted in high-

lighting recent cuts in both Federal and State defender offices, these cuts occur on the 50th anniversary of the Supreme Court's landmark decision in Gideon v. Wainwright, which provided the constitutional right to defense counsel for indigent defendants. The cuts to the Defender Services program highlight the harm that sequestration, if left in place, poses for individual constitutional guarantees.

Under sequestration, the judiciary finds itself in dire circumstances. I do not overstate when I say that we cannot continue to operate at such drastically reduced funding levels without seriously compromising our constitutional mission. We are hopeful that Congress and the Administration will ultimately reach agreement on alternative deficit reduction measures that give priority funding to the functions critical to our democracy and reject the indiscriminate approach of sequestration.

Turning to the 2014 budget request, today, of course, sequestration is in place, but our 2013 full year appropriation is still unresolved. For purposes, therefore, of constructing the 2014 request, we assumed the fiscal year 2013 funding level available under the current continuing resolution of a 0.6 percent increase above the fiscal year 2012 enacted appropriations level. After the full year 2013 appropriations are known, we will update our 2014 request and advise you all of any changes.

We do in the 2014 request seek $7.2 billion in appropriations, a 2.6 percent overall increase above the assumed 2013 level, our lowest requested increase on record. We believe the funding level we have requested represents the minimum amount required to meet our constitutional and statutory responsibilities. The request reflects essentially a current services budget and includes $175 million for adjustments to base, for standard pay and nonpay changes, including the 1 percent cost-of-living adjustment for judiciary employees, consistent with the President's recommendation for civil service workers, and a total of $5 million for two small program increases.

Before I conclude my remarks, I would like to acknowledge the extremely difficult tasks that you all face in deciding how to allocate extremely limited resources among the Federal entities under the jurisdiction of this subcommittee, and we know that each of those entities attempts to make a strong case for its resource needs. But we would ask, as you consider the judiciary's funding for 2014, that you take into account the nature and importance of our work. If sufficient funding is not provided to the courts, we cannot provide the people of the United States the type of justice system that has been a hallmark of our liberty throughout our Nation's history.

I would ask that my statement be placed in the record, along with the statements of the Administrative Office, the Federal Judicial Center, the Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade.

Mr. CRENSHAW. Thank you.

[The information follows:]

STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

March 20, 2013

INTRODUCTION

Chairman Crenshaw, Representative Serrano, and members of the Committee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2014. In addition, I will discuss the impact of sequestration on federal court operations nationwide, the Judiciary's fiscal year 2013 funding needs under a full-year continuing resolution, and provide an update on our cost containment program, including efforts underway to reduce the Judiciary's space footprint. This is my ninth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my seventh appearance before the Financial Services and General Government panel. Appearing with me today is Judge Thomas F. Hogan, the Director of the Administrative Office of the United States Courts.

Mr. Chairman, we had a strong working relationship with your predecessor, former Chairwoman Jo Ann Emerson, and we look forward to continuing that tradition with you and Representative Serrano, as well as with the excellent staff of the Committee.

STATEMENTS FOR THE RECORD

In addition to my statement and Judge Hogan's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade be included in the hearing record.

THE JUDICIARY'S CONSTITUTIONAL DUTIES

To begin, I would like to acknowledge the extremely difficult task this Committee has in deciding how to allocate limited resources among the 30 federal entities under its jurisdiction, each one likely making a strong case for its resource needs. As you consider Judiciary funding for fiscal years 2013 and 2014, however, we ask the Committee to take into account the nature and importance of our work. The Judiciary performs Constitutionally-mandated core government functions that are a pillar of our democratic system of government. Unlike many Executive Branch entities, we do not have programs or grants that we can cut in response to a budget shortfall. The entire scope and volume of our work are attributable to carrying out functions assigned to us by the Constitution and by statute. We cannot reduce our work if we face deep funding cuts. We must adjudicate all cases that are filed with the courts, we must

protect the community by supervising defendants awaiting trial and criminals on post-conviction release, we must provide qualified defense counsel for defendants who cannot afford representation, we must pay jurors for costs associated with performing their civic duty, and we must ensure the safety and security of court staff, litigants, and the public in federal court facilities. This is a broad mission and it is carried out by the Judiciary's 35,000 dedicated judges, probation and pretrial services officers, clerks of court staff, federal defenders, law clerks, and other personnel. We look to Congress to recognize the uncontrollable nature of our workload and provide the resources needed to perform this essential work. If sufficient funding is not provided to the courts, we cannot provide the people of the United States the type of justice system that has been a hallmark of our liberty throughout our nation's history.

IMPACT OF SEQUESTRATION CUTS ON THE FEDERAL COURTS

I turn now to a matter of the utmost concern to us. If left unchanged, the sequestration cuts that took effect on March 1 will have a devastating effect on federal court operations nationwide. The 5.0 percent across-the-board sequestration cut results in a nearly $350 million reduction in Judiciary funding below current levels. We believe we have done all we can to minimize the impacts of sequestration but a cut of this magnitude, particularly so late in the fiscal year, will affect every facet of court operations and impact the general public as well as individuals and businesses looking for relief in the courts. On February 7, 2013 the Executive Committee of the Judicial Conference finalized a number of emergency measures based on updated sequestration calculations for the Judiciary. We are now in the process of implementing those measures. These actions are unsustainable, difficult, and painful to implement. Indeed, the Judiciary cannot continue to operate at sequestration funding levels without seriously compromising the Constitutional mission of the federal courts.

To manage this situation, the Judiciary will phase in the cuts, but the impacts will be real, and potentially devastating to the citizens served by the courts. The courts operate under a decentralized management system so each court will decide how to implement the funding cuts but we estimate that, on a national basis, up to 2,000 employees could be laid off this fiscal year, or face furloughs for one day a pay period, resulting in a 10 percent pay cut. These staffing losses would come on top of the 1,800 court staff that have been lost over the last 18 months, representing a 9 percent decline in staff since July 2011.

Sequestration will impact public safety because there will be fewer probation officers to supervise criminal offenders released in our communities, and funding for drug testing and mental health treatment will be cut 20 percent. There will be a 30 percent cut in funding for court security systems and equipment and court security officers will be required to work reduced hours thus creating security vulnerabilities throughout the federal court system. In our defender services program, federal defender attorney staffing levels will decline which could result in delays in appointing defense counsel for defendants, and payments to private attorneys appointed under the Criminal Justice Act could be delayed for nearly three weeks in September. Sequestration will also require deep cuts in our information technology programs on which we depend for our daily case processing and on which we have successfully relied in past years to achieve efficiencies and limit growth in our budget.

Chairman Crenshaw and Representative Serrano, I must convey to you in the strongest possible terms the dire circumstances the federal Judiciary finds itself in under sequestration. I emphasize that the Judiciary cannot continue to operate at such drastically reduced funding levels without seriously compromising the Constitutional mission of the federal courts. This is especially true if these funding levels continue into fiscal year 2014 and beyond. We are hopeful that Congress and the Administration will ultimately reach agreement on alternative deficit reduction measures that renders the current sequestration cuts unnecessary. I will now outline for the Committee the fiscal year 2013 funding needs of the Judiciary under a full-year continuing resolution.

FISCAL YEAR 2013 FULL-YEAR CONTINUING RESOLUTION

I appear before you today to testify on the Judiciary's fiscal year 2014 budget request with sequestration in place and fiscal year 2013 full-year appropriations for the federal government still unresolved. For the purposes of constructing the Judiciary's fiscal year 2014 budget request we assumed – like the Executive Branch – for fiscal year 2013 the funding level available under the current continuing resolution (Pub. L. 112-175) of a 0.6 percent increase above the fiscal year 2012 enacted appropriations level. After full-year fiscal year 2013 appropriations for the Judiciary are known, including any changes to sequestration, we will update our fiscal year 2014 request and advise the House and Senate Appropriations Committees accordingly.

On February 13, 2013, Judge Hogan and I transmitted a letter to the House and Senate Appropriations Committees requesting that two anomalies be included in the fiscal year 2013 full-year continuing resolution measure you will be considering this month. The Judiciary requires a funding level of $7,017,065,000 in the continuing resolution, which includes an anomaly of $15,000,000 above a fiscal year 2012 hard freeze level to ensure that payments to private attorneys providing defense representation mandated by the Sixth Amendment and the Criminal Justice Act continue uninterrupted. Although there are anomaly needs in other Judiciary accounts, we have limited our request to the Defender Services account, our most urgent funding need.

A full-year continuing resolution funding level of $7,017,065,000 is the minimum necessary to maintain court operations at current levels. Funding below this level would result in additional staffing losses in the courts that, due to funding constraints, have already downsized by 1,800 staff in the last 18 months. This is a nearly 9 percent reduction of staff in our clerks of court and probation and pretrial services offices. The vast majority of these losses were due to normal attrition, but we did offer voluntary separation incentive payments (buyouts) and early retirement in order to minimize forced downsizing.

At a hard freeze for fiscal year 2013, without sequestration cuts, we anticipate courts would continue to downsize, primarily through attrition, including buyouts and early retirement. However, cuts below the fiscal year 2012 level – even cuts less severe than sequestration – would adversely impact federal court operations and result in forced downsizing (reductions-in-force and furloughs) in the courts creating delays in processing cases and a reduction in the supervision of felons on post-conviction release in the community. There would also be reductions in the funds used for drug testing and treatment and for mental health treatment for

those released felons under supervision. Cuts to court security funding place at risk the safety of judges, litigants, witnesses, jurors, and court employees. Cuts to defender services would require staff furloughs in federal defender organizations and the deferral of panel attorney payments into fiscal year 2014 which may impact our ability to secure competent counsel to accept these cases. Cuts at the sequestration level only magnify these impacts across the federal court system.

Our second CR anomaly request is a no-cost anomaly to extend the authorizations for nine temporary district judgeships that are at risk of being lost. The authorizations for these judgeships have either already expired, in the case of the Kansas and Hawaii judgeships, or the authorizations expire later in 2013. If a judgeship vacancy occurs in a district (through death, retirement, etc.) after a temporary judgeship authorization expires, that judgeship is permanently lost. This was the case in fiscal year 2011 when the authorization for a temporary district judgeship in the Northern District of Ohio was not extended during a continuing resolution, became vacant during that period, and the judgeship was lost. When a temporary judgeship is lost, caseloads have to be shifted to other judges, increasing their workload and possibly delaying the judicial process. Similar extensions have been included in prior appropriations bills, and we ask the Committee to extend the authorizations to protect these nine temporary judgeships into 2014.

COST CONTAINMENT

The Judiciary continues to build on the cost-containment efforts we started in 2004. Over the last decade many of the cost-cutting initiatives have been implemented and have helped limit the growth in the Judiciary's budget. In fact, our fiscal year 2014 budget request reflects a 2.6 percent increase above the fiscal year 2013 assumed funding level, the Judiciary's lowest requested increase ever.

While we are proud of our accomplishments to date in containing costs, we recognize that we are in an era of budget constraint. Accordingly, we have embarked on a new round of cost-containment initiatives. Our approach to cost containment is to continuously challenge our ways of doing business and to identify, wherever possible, ways to economize even further. To be candid, this can be a painful process as we are often proposing changes to long established Judiciary customs and practices and there are differing and legitimate perspectives within the Judiciary on containing costs. But we are committed to doing everything we can to conserve resources and be good stewards of the taxpayers' money. We continue to take these difficult steps in the belief that they are essential to positioning the Judiciary for the fiscal realities of today and the future.

I must point out, however, that while cost containment has been helpful during the last several years of flat budgets, no amount of cost containment will offset the major reductions we face from sequestration. We believe we are doing our part by containing costs and limiting our request, but we have an essential job to perform and we look to the Congress to fund that request.

One of our new cost-containment initiatives is to maximize the implementation of shared administrative services among the courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. We believe this will reduce the duplication caused by multiple human resources, procurement, financial management, and information technology staffs in a single judicial district or circuit. This effort will take several years to implement, but it

should allow courts to partially absorb budget cuts by reducing administrative staffing and overhead costs and streamlining administrative processes, allowing them to minimize cuts to staff performing core operations.

At the request of this Committee, the Government Accountability Office (GAO) is studying the issue of consolidating district and bankruptcy clerks' offices. We are cooperating with GAO on the study and will review their findings and recommendations.

Chairman Crenshaw, during my appearance last year, your predecessor on this Committee, Congresswoman Jo Ann Emerson, expressed specific interest in two areas: reducing the Judiciary's space footprint and containing costs in the Defender Services program. I would like to update the Committee on progress we are making in these areas.

REDUCING THE JUDICIARY'S SPACE FOOTPRINT

One of the Judiciary's biggest cost-containment success to date has been in limiting the growth in space rent costs. As a result of cost containment initiatives put in place in recent years, our fiscal year 2014 budget request for GSA rent reflects a cost avoidance of approximately $400 million below estimates made prior to implementation of our cost-containment initiatives. We have revamped our long-range space planning process to better prioritize space needs with an eye towards cost. With strong controls in place to limit the growth in space rent costs, we are now focusing on reducing the Judiciary's overall space footprint.

By pursuing aggressive space reduction policies, the Judiciary believes a 3 percent space reduction by fiscal year 2018 is achievable subject to certain exceptions, including any new courthouse construction, renovation, or alteration projects approved by Congress, and additional square footage needed for newly authorized judgeships and additional senior judges in accordance with courtroom sharing policies. I cannot emphasize strongly enough that GSA's cooperation is essential to our ability to reduce space. As the Judiciary's landlord, we will need GSA to work closely with us on space reduction, including taking back excess space from us in a timely manner.

Our most ambitious space reduction effort is the Integrated Workplace Initiative (IWI) which will reduce the Judiciary's space footprint by taking advantage of the flexibility that technology makes possible with regard to where and when work is performed. The goal of this initiative is to create a smaller and more efficient workplace that reflects changing work styles, such as telework and mobile technologies for court employees. For example, probation offices generally require less space than before because of the nature of the work that most probation officers now perform (i.e., they use mobile devices while working in the field). As a result, some of these probation offices could reduce the amount of commercial space that they lease, or they could move out of commercial space and into courthouses, while using less space in the courthouses than previously needed. In addition, with the increased use of electronic case filings of court documents instead of paper filings, there will be opportunities for space reduction in clerks of court offices. There will be upfront costs associated with construction, relocation, and renovation expenses but we believe this initiative has the potential to produce significant long-term savings as long as we are able to fund those upfront costs.

Two IWI pilot projects are currently in concept and design phases – one in Chicago, IL, and one in Tucson, AZ. In Chicago, the probation office is being relocated from commercially-

leased space to a federal building while reducing space occupied by at least 50 percent. In Tucson, probation office personnel who were in leased space are being consolidated with other probation office personnel in the courthouse in less total occupied space. The leased space is being given up, which will result in additional cost savings. In Chicago, GSA is covering concept design costs but the Judiciary will have to fund the detailed design and construction costs estimated to be $3.4 million. In Tucson, the concept design was completed in January 2013. The next stage is the detailed design and construction, estimated to cost just over $3.2 million, and which the Judiciary will have to fund. It will be very difficult for us to fund these costs at a sequestration funding level.

The Judiciary will also continue to look at releasing space in underutilized non-resident facilities based on Judicial Conference approved criteria and upon the recommendation of the appropriate circuit judicial council. A non-resident facility is defined as a facility with a courtroom that does not have a full-time circuit, district, magistrate, or bankruptcy judge in residence, and since 1996 the Judiciary has identified and closed five non-resident facilities. In addition, another 13 court facilities have been vacated for a variety of reasons. The most recent space reductions approved by the Judicial Conference at its September 2012 session will eventually result in the release of 56,000 square feet of space in six additional non-resident facilities with associated annual rent savings of approximately $1.0 million.

We are pursuing other space reduction initiatives as well. The increased use of online legal research by court personnel offers an opportunity to reduce library-related costs in the areas of library staffing, space, and collections. We have also created financial incentives for courts across the country to identify and release excess space.

I will close on this topic by assuring the Committee that we take seriously your concerns regarding the Judiciary's space inventory. We recognize that increasing space during tight budget times is not sustainable and we are committed to working with the Committee and GSA on space reduction going forward.

CONTAINING COSTS IN DEFENDER SERVICES

At last year's hearing, former Chairwoman Emerson asked about cost growth in the Defender Services program. The Defender Services program is the Judiciary's second largest program at approximately $1.0 billion a year. Funding in this program is used to provide defense representation under the Criminal Justice Act to defendants charged with a federal crime who cannot afford representation, as constitutionally required by the Sixth Amendment. The program is largely reactive – it has no control over the number and nature of cases it must defend against. The caseload is driven entirely by the prosecutorial policies and practices of the U.S. Department of Justice and its 93 United States Attorneys. Nevertheless, the Judiciary continues to make real progress in containing the costs of providing effective representation. The average annual growth of 8 percent per year in obligations between FY 2007 and FY 2010 declines to 2.6 percent between FY 2011 and FY 2013 (projected). I would like to highlight for the Committee four major initiatives we are pursuing:

Case Budgeting. Our case budgeting initiative focuses on the 3 percent of panel attorney representations that account, disproportionately, for 30 percent of the total cost of all panel attorney representations. To specifically target these cases, the Judiciary is promoting the use of

case budgeting for any non-capital "mega-case" – a representation in which total expenditures exceed $30,000 – and for all federal capital prosecutions and capital post-conviction proceedings. Most importantly, the Defender Services program is funding case-budgeting attorneys in three circuits to work with judges and panel attorneys in developing budgets to ensure that the representation is provided in a cost-effective manner. A 2010 Federal Judicial Center study found that the savings from the three positions more than offset their costs. We hope to expand our case budgeting initiative from three to seven positions in fiscal year 2013 in order to provide case budgeting services to an additional six circuits.

Electronic Voucher System. The Judiciary is making major progress in developing an electronic vouchering system, known as eCJA, to replace the current paper-based system for Criminal Justice Act payments to panel attorneys. These attorneys are paid on a per case, per hour basis and currently submit paper vouchers that are entered manually into a system and processed for payment. This is an inefficient process that can result in keying and payment errors. The new system will enable electronic preparation, submission, processing, and ultimately payment of vouchers; reduce voucher processing errors; and expedite voucher processing and payment. It will also provide judges with historical payment information to assist them in evaluating and approving vouchers. Implementation of the system is expected to begin in 2013.

Reducing Discovery Costs. We are collaborating with the Department of Justice (DOJ) to contain discovery costs in criminal cases (for both the DOJ and the Judiciary) by effectively managing electronically stored information (ESI). In fiscal year 2012, broad national protocols were disseminated that were jointly developed, by the DOJ and the Administrative Office, for the cost-effective and efficient management of ESI in discovery. The Judiciary is optimistic that substantial cost avoidance will result from widespread use of the protocols – to help meet the rapidly changing technological challenges in this high-cost area of discovery – for CJA federal defender and panel attorney cases – and for the DOJ.

Case Weights. I made a commitment last year that the fiscal year 2014 budget request for Defender Services would reflect the application of a "case-weights" methodology in establishing staffing requirements for federal defender organizations. I can report today that the fiscal year 2014 budget request does reflect case weighting. Case weights act as a scientific and empirically-based methodology for determining the complexity of workload in the Defender Services program and allows for a more efficient allocation of limited resources. Case weights provide a fair, objective basis for identifying staffing needs based on disparate case types in federal defender organizations around the country. I believe that case weights will improve the utilization of resources in the Defender Services program.

Again, I want to assure the Committee that we are committed to cost containment in the Defender Services program – and throughout the Judiciary – and will continue to look for additional opportunities to provide cost-effective services in this program.

FISCAL YEAR 2014 BUDGET REQUEST

For fiscal year 2014, the Judiciary is seeking $7.22 billion in appropriations, a 2.6 percent overall increase above the assumed fiscal year 2013 appropriations level, the lowest requested increase on record, as I mentioned earlier in my testimony. We believe the requested funding

level represents the minimum amount required to meet our Constitutional and statutory responsibilities. As I mentioned at the outset, we used the fiscal year 2013 six-month continuing resolution level to construct the fiscal year 2014 request. After full-year fiscal year 2013 appropriations for the Judiciary are known, we will update our fiscal year 2014 request and advise the House and Senate Appropriations Committees of any changes.

The Judiciary's fiscal year 2014 budget request represents essentially a current services budget and includes $175.0 million for adjustments to base for standard pay and non-pay changes, including a 1.0 percent ECI adjustment for Judiciary personnel consistent with the President's recommendation for Executive Branch personnel, and a total of $4.7 million for two small program increases in two Judiciary accounts. I will summarize the 2014 requests for our three largest accounts.

The Judiciary's largest account, courts' Salaries and Expenses, funds the bulk of federal court operations including the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. In recognition of the fiscal constraints we all face, the Judicial Conference made some very tough choices and elected to limit the growth of this account to 2.3 percent for fiscal year 2014 to $5.18 billion. One decision was not to request funding for this account to restore *any* of the 1,800 staff we have lost over the last 18 months as a result of budget constraints. The dramatic loss of staff since July 2011 reflects a reduction far below what the courts require to perform their mission. The reality is that the courts simply do not have the funding needed to support on-board staffing levels and are choosing to leave vacancies unfilled until the federal budget picture stabilizes. This trend cannot continue without serious repercussions to the federal court system in this country.

The Defender Services program, which provides criminal defense services under the Criminal Justice Act to defendants that are unable to afford counsel, is projected to have an increase in weighted caseload in fiscal year 2014 and requires a 3.0 percent increase to $1.07 billion to handle an estimated 209,000 representations. The request provides a small cost-of-living adjustment to the panel attorney non-capital rate (from $125 to $126 per hour) and capital rate (from $178 to $180 per hour), consistent with the cost-of-living adjustment requested for federal workers. The request includes no program increases.

Our Court Security account funds protective guard services and security systems and equipment at federal courthouses and requires a 4.2 percent increase to $524 million for fiscal year 2014. The request will provide for additional court security officers, higher Federal Protective Service costs, and other standard adjustments. The request includes a single program increase of $1.7 million to improve security at federal court facilities by increasing in-service training for court security officers from 8 to 16 hours per year, consistent with training that other security officers guarding federal facilities receive.

A summary of fiscal year 2014 adjustments to base and program increases and appropriations requirements for each Judiciary account are included at Appendix A.

CONCLUSION

Chairman Crenshaw and Representative Serrano, I hope that my testimony today provides you with some insight into the impact of sequestration on the federal courts, the fiscal year 2013 and fiscal year 2014 funding needs of the Judiciary as well as our commitment to cost

containment. Consideration this month of full-year funding for fiscal year 2013, followed in a few months by markup of the fiscal year 2014 appropriations bill, will present this Committee with difficult funding decisions. In your deliberations we ask that you take into account the Judiciary's unique Constitutional role in our system of government and the importance to our citizenry of an open, accessible, and well-functioning federal court system. We believe, and I hope you agree, that the federal Judiciary is a vital component of what a free society affords its people, and a standard for the world to emulate. Finally, as a co-equal partner in this great democracy, we ask that Congress preserve our federal court system now and in the future by providing funding that takes into consideration sequestration and allows the Judiciary to sustain current on-board staffing levels and operations as reflected in our fiscal year 2013 full-year continuing resolution anomaly request and in our fiscal year 2014 budget request.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Committee may have.

Appendix A

SUMMARY OF THE JUDICIARY'S FISCAL YEAR 2014 REQUEST

The Judiciary's fiscal year 2014 appropriation request totals $7,221,707,000, an increase of $179,665,000 (2.6 percent) over the fiscal year 2013 assumed appropriation level.

- A total of $175.0 million (97 percent) of the $179.7 million increase requested will provide for pay adjustments, inflation and other adjustments to base necessary to maintain current services. Of this amount,
  - An increase of $85.5 million will provide for inflationary pay and benefit rate increases, including expected January 2014 pay adjustments (e.g. 1.0% ECI adjustment for federal workers), changes in health benefit premiums, changes in benefit costs for both judges and supporting personnel, a cost-of-living adjustment for panel attorneys, and a wage rate adjustment for court security officers.
  - An increase of $33.6 million is necessary to replace non-appropriated sources of funds used to support base requirements in fiscal year 2013 with direct appropriations.
  - An increase of $25.8 million is associated with an additional 27 senior judges and 90 associated staff, and an additional 10 active Article III judges and 51 associated staff.
  - An increase of $17.4 million will provide for increases in contract rates and other standard inflationary increases.
  - A net increase of $11.3 million will provide for the increase in weighted representations associated with the projected 209,000 non-capital and capital representations in the Defender Services program in fiscal year 2014.
  - An increase of $9.0 million is for GSA rent and related costs.
  - An increase of $5.2 million is for security-related adjustments.
  - An increase of $3.4 million is for adjustments for the retirement trust funds accounts and changes in the Fees of Jurors program.
  - A decrease of $16.2 million is associated with cost-containment reductions to Judiciary programs and fiscal year 2013 non-recurring requirements.
- The remaining $4.7 million (3 percent) of the requested increase is for program enhancements, as follows:
  - An increase of $3.0 million will provide for building exterior façade restoration at the

Supreme Court.

- An increase of $1.7 million is required to increase in-service training for court security officers from 8 to 16 hours per year, consistent with training that other security officers guarding federal facilities receive.

Judiciary Appropriations
($000)

Appropriation Account	FY 2013 Assumed Appropriations[1]	FY 2014 Request	Change FY 2014 vs. FY 2013	% Change FY 2014 vs. FY 2013
U.S. Supreme Court				
Salaries & Expenses	$75,273	$74,838	($435)	-0.6%
Care of Building and Grounds	$8,209	$11,635	$3,426	41.7%
Total	$83,482	$86,473	$2,991	3.6%
U.S. Court of Appeals for the Federal Circuit	$32,706	$33,355	$649	2.0%
U.S. Court of International Trade	$21,565	$21,973	$408	1.9%
Courts of Appeals, District Courts, and Other Judicial Services				
Salaries & Expenses - Direct	$5,054,016	$5,170,239	$116,223	
Vaccine Injury Trust Fund	$5,031	$5,327	$296	
Total	$5,059,047	$5,175,566	$116,519	2.3%
Defender Services	$1,037,310	$1,068,623	$31,313	3.0%
Fees of Jurors & Commissioners	$52,226	$54,414	$2,188	4.2%
Court Security	$503,060	$524,338	$21,278	4.2%
Subtotal	$6,651,643	$6,822,941	$171,298	2.6%
Administrative Office of the U.S. Courts	$83,416	$85,354	$1,938	2.3%
Federal Judicial Center	$27,165	$27,664	$499	1.8%
Judiciary Retirement Funds	$125,464	$126,931	$1,467	1.2%
U.S. Sentencing Commission	$16,601	$17,016	$415	2.5%
Direct	$7,037,011	$7,216,380	$179,369	
Vaccine Injury Trust Fund	$5,031	$5,327	$296	
Total	$7,042,042	$7,221,707	$179,665	2.6%

[1]The fiscal year 2013 funding assumption reflects amounts available under the fiscal year 2013 six-month continuing resolution (Pub. L. 112-175) that runs through March 27, 2013.

HONORABLE JULIA SMITH GIBBONS
United States Circuit Judge
970 Federal Building
Memphis, TN 38103

Judge Julia Smith Gibbons was appointed to the United States Court of Appeals for the Sixth Circuit in 2002. Prior to her appointment as circuit judge, she served as United States District Judge for the Western District of Tennessee from 1983-2002. She was Chief Judge of the district court from 1994-2000. Prior to becoming a federal district judge, Judge Gibbons served as judge of the Tennessee Circuit Court for the Fifteenth Judicial Circuit from 1981-83. Judge Gibbons chairs the Budget Committee of the Judicial Conference of the United States.

From 1979 to 1981 Judge Gibbons was Legal Advisor to Governor Alexander. She was in the private practice of law from 1976 to 1979 with the Memphis firm of Farris, Hancock, Gilman, Branan & Lanier. In 1975-76 she served as law clerk to the late Honorable William E. Miller, Circuit Judge, United States Court of Appeals for the Sixth Circuit. She was admitted to the Tennessee bar in 1975.

Judge Gibbons received her J.D. degree from the University of Virginia School of Law. At Virginia she was elected to Order of the Coif and was a member of the Editorial Board of the Virginia Law Review. She received her B.A. magna cum laude from Vanderbilt University in 1972 and was elected to Phi Beta Kappa.

STATEMENT OF HON. JEREMY D. FOGEL, DIRECTOR

FEDERAL JUDICIAL CENTER

BEFORE THE SUBCOMMITTEE ON

FINANCIAL SERVICES AND GENERAL GOVERNMENT

OF THE COMMITTEE ON APPROPRIATIONS

OF THE HOUSE OF REPRESENTATIVES

March 20, 2013

Chairman Crenshaw, Representative Serrano, and members of the Committee:

My name is Jeremy Fogel. I have been a United States District Judge in the Northern District of California since 1998 and the Director of the Federal Judicial Center since October 2011. I appreciate the opportunity to provide you with this statement in support of our 2014 appropriations request. Because our request is modest, this statement is brief. The Center's Board, which the Chief Justice chairs and on which the Director of the Administrative Office of the U. S. Courts serves, approved this request in September 2012.

When we prepared this statement, Congress had not yet completed action on appropriations for fiscal year 2013. In formulating our fiscal year 2014 budget request, the Center, like the Judiciary, assumed a fiscal year 2013 appropriations level based on the six-month continuing resolution (H. J. Res. 117) passed by the House of Representatives and the Senate in September 2012. We will, if necessary, update our fiscal year 2014 requirements and request once the fiscal year 2013 appropriations have been finalized.

The Center's Contribution to the Courts

The Center's statutory mission is to further the development and adoption of improved judicial administration in the federal courts. We carry out our mission through educational programs for judges to help them effectively and fairly dispose of complex litigation, and for court managers and staff to help them operate efficiently and to maintain services to the public, including supervision of federal criminal defendants and offenders. Our independent, impartial policy

research on federal litigation and judicial administration contributes directly to changes in procedures and policies that make litigation and court operations more efficient.

The need for education and training never has been greater. Educating judges about new legal developments, ethical requirements and effective case management practices always has been and will continue to be necessary. Judges and court managers also seek additional education in effective court management to help address the challenging fiscal climate, use technology effectively and maintain a productive workforce. We rely increasingly on distance education technologies and have undertaken a major initiative to expand our capabilities in that area.

The Impact of Sequestration

Sequestration has resulted in a reduction of $1,358,000 for the remainder of fiscal year 2013. The Center will meet that shortfall through a combination of reduced staffing levels, reductions in purchases of equipment and technology (primarily to support distance education), and reduced education and training programming. Even without additional reductions going forward, the impact of the cuts necessary to absorb the reduction in fiscal year 2013 also will restrict the Center's ability to provide needed educational programming to the courts in 2014.

The Center's Fiscal Year 2014 Request

Our request for 2014 is $27,664,000--an increase of $499,000 (or 1.8%) above our CR-funded fiscal year 2013 appropriations level ($27,165,000). The $499,000 increase is for standard adjustments to our 2013 base. We are not requesting any funds for program growth or enhancements.

I hope that the brevity of this statement does not minimize in any way the vital contribution the Center makes to support the work of the federal courts. I respectfully urge you to find a way to provide the Center with the modest increase it needs in 2014. I would be pleased to respond to any questions you may have.

STATEMENT OF THE UNITED STATES SENTENCING COMMISSION
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 20, 2013

Chairman Crenshaw, Ranking Member Serrano, and members of the Subcommittee, the United States Sentencing Commission (Commission) thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2014. The Commission's statutory mission, as set forth in the Sentencing Reform Act of 1984, continues to be both reaffirmed and significantly impacted by recent United States Supreme Court decisions regarding federal sentencing policy. Full funding of the Commission's fiscal year 2014 request will ensure that the Commission can continue to fulfill its statutory mission.

RESOURCES REQUESTED

The Commission is requesting $17,016,000 for fiscal year 2014, representing a 2.5 percent increase over the assumed fiscal year 2013 appropriation of $16,601,000. The Commission fully appreciates the serious budget constraints facing the nation and the need for government agencies to allocate their resources responsibly. Accordingly, the Commission requests an increase over its assumed fiscal year 2013 budget appropriation only to account for inflationary increases and adjustments for personnel costs, and to maintain current services.

JUSTIFICATION FOR COMMISSION'S APPROPRIATIONS REQUEST

The statutory duties of the Commission include: (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of government and synthesizes the interests of the three branches in order to promote the purposes of sentencing as set forth in the Sentencing Reform Act of 1984. Consistent with the Supreme Court's decision in *United States v. Booker*,[1] which rendered the federal sentencing guidelines advisory, the Commission has continued its core mission to promulgate new guidelines and guideline amendments in response to legislation, sentencing data and information and feedback from sentencing courts, Congress, the Executive Branch, federal defenders, and others in the federal criminal justice system.

[1] 543 U.S. 220 (2005).

Although the demand for the Commission's work product, sentencing data and analyses, and services continues to increase after *Booker*, the Commission is not requesting any program increases for fiscal year 2014. The Commission appreciates the funding Congress has previously provided and pledges to continue to efficiently maximize its allocated resources while fulfilling its many statutory duties.

SENTENCING POLICY DEVELOPMENT

In fiscal year 2014, the Commission expects to continue work on a number of sentencing policy initiatives, including implementation of legislation, and hopes that existing commissioner vacancies will be filled soon to aid in the completion of that work. The Commission is in the process of responding to new legislation enacted toward the end of the 112th Congress, including the SAFE DOSES Act, Pub. L. No. 112–186, the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112–81, the Food and Drug Administration Safety and Innovation Act, Pub. L. No. 112–144, and the Child Protection Act of 2012, Pub. L. No. 112–206. Consistent with its administrative process for all guideline amendments, the Commission is holding hearings, collecting sentencing data, reviewing legislative history, conducting case law analysis, and gathering other relevant information regarding the crimes covered in these acts. The Commission expects to address these new laws with guideline amendments that will become effective in fiscal year 2014 absent congressional action to the contrary and stands ready to implement any new legislation enacted by the 113th Congress in fiscal year 2014. In addition, the Commission is continuing its work on economic crimes, including a comprehensive study of the fraud guideline that will continue into fiscal year 2014, including a symposium on fraud offenses to be held in the fall of 2013, and consideration of any amendments that may be appropriate in light of the information obtained from such study.

In fiscal year 2014, the Commission also will continue working to strengthen the federal sentencing system consistent with the findings and recommendations set forth in three major recent reports to Congress on the impact of *Booker* on federal sentencing, federal child pornography offenses, and mandatory minimum penalties. The Commission's December 2012 report on *Booker* found that the sentencing guidelines remain the essential starting point for all federal sentences and continue to exert significant influence on federal sentencing. However, for some offense types — for example, child pornography and fraud offenses — the influence of the guidelines has diminished since *Booker*. In addition, the report showed that regional disparities have increased and demographic characteristics are now more strongly correlated with sentencing outcomes than during previous periods studied. The report set forth several recommendations to Congress for strengthening the guidelines system, including developing more robust substantive appellate review, reconciling statutes that restrict the Commission's consideration of certain offender characteristics with statutory interpretations that require sentencing courts to consider those same offender characteristics more expansively, and resolving the uncertainty about the weight to be given the guidelines at sentencing.

The Commission's December 2012 report on federal child pornography offenses reviewed relevant statutes, case law, and social science and literature concerning child pornography offenses, offenders, and victims; contained extensive data analyses of several

thousands of federal child pornography cases sentenced from fiscal year 1992 through the first quarter of fiscal year 2012; studied recidivism rates for child pornography offenders; and reflected testimony received from experts in technology and the social sciences, treatment providers, law enforcement officials, legal practitioners, victims' advocates, and members of the judiciary. The report concluded that the guideline for child pornography possession, receipt and distribution offenses, which has not been comprehensively revised in a decade, is now outdated, particularly in light of changes in how child pornography offenders now use technology such as peer-to-peer networks. The Commission recommended comprehensive revisions to the guideline to better reflect varying degrees of offender behavior in three general areas: (1) the content of the offender's collection and the nature of the offender's collecting behavior; (2) the offender's engagement with other offenders, particularly in Internet "communities" devoted to child pornography; and (3) an offender's history of engaging in sexually abusive, exploitative, or predatory conduct.

The Commission's October 2011 report on mandatory minimum penalties found that certain mandatory minimum penalties apply too broadly, are set too high, or both, to warrant the prescribed mandatory minimum penalty for the full range of offenders who could be prosecuted under the particular statute. Among the several specific recommendations set forth in the report for congressional consideration are the possible expansion of the statutory safety valve at 18 U.S.C. § 3553(f) to certain non-violent drug offenders who receive two, or perhaps three, criminal history points under the guidelines; possible consideration of expanding the safety valve to other low-level, non-violent offenders convicted of other offenses carrying mandatory minimum penalties; elimination of the mandatory "stacking" provision requirement for multiple violations of 18 U.S.C. § 924(c); and reassessment of both the severity and scope of certain recidivist statutory provisions.

The Commission believes that the information and data contained in these three reports will contribute significantly to the consideration of federal sentencing policy by Congress and others in fiscal years 2013 and 2014, and is eager to work with Congress and others on measures that can be taken regarding the findings and recommendations included in those reports.

In addition to these reports, in fiscal year 2013 the Commission began a multi-year study that will examine the circumstances that correlate with increased or decreased recidivism. The Commission plans to hold at least one recidivism symposium and a roundtable discussion of experts. As described below, that multi-year study also will require the Commission to increase and refine its collection of data on modifications and revocations of probation and supervised release. The Commission anticipates that this study may form the basis of possible recommendations that would result in reduced costs of incarceration and overcapacity of the federal prison system. The Commission also is continuing a multi-year study of several statutory and guideline definitions that are the sources of significant litigation that cause judicial inefficiencies, including "crime of violence," "aggravated felony," "violent felony," and "drug trafficking offense."

COLLECTING, ANALYZING AND REPORTING SENTENCING DATA

To fulfill its statutory duties to collect, analyze and report federal sentencing statistics and trends, the Commission each year collects data regarding every felony and class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in every criminal case: the charging document, the plea agreement, the presentence report, the judgment and commitment order, and the statement of reasons form.[2] For each case, the Commission analyzes these documents and collects information of interest and importance to the federal criminal justice system. The high volume of federal cases sentenced annually significantly affects the Commission's data collection, analysis, and reporting efforts. The Commission received more than 400,000 documents for more than 84,000 original sentencings and more than 10,000 resentencings in fiscal year 2012. To put this caseload in perspective, in fiscal year 1995 the Commission received documentation for 38,500 cases sentenced under the guidelines.

Since March 2008, the Commission has also collected real-time data from the courts on over 25,500 motions filed for retroactive application of its 2007 crack cocaine amendment. In November 2011, the Commission began collecting similar information on the retroactive application of its permanent amendment implementing the Fair Sentencing Act of 2010, Pub. L. No. 110–220. Retroactive application of that amendment took effect on November 1, 2011. As of January 2014, the Commission has collected data on more than 10,800 cases in which a modification of the sentence imposed was sought under that amendment. The Commission anticipates eventually receiving documentation on more than 15,000 motions for retroactive application of the 2011 crack cocaine amendment. These documents will form the basis for a study on recidivism as contemplated by the Act, which requires the Commission to submit a report to Congress five years after its enactment (August 3, 2010).

In fiscal year 2013, the Commission launched an effort to improve and refine its collection of data on modifications and revocations of probation and supervised release. This effort is expected to require the development of standardized documents for the courts to use in coordination with the Administrative Office of the United States Courts to promote the submission of these documents to the Commission. This effort is expected to result in several thousands of additional documents being available to the Commission for collection and analysis each year. The data that would be obtained from those documents, however, increasingly is necessary to form the basis of sound cost-savings policy regarding the length of appropriate terms of supervised release, use of alternatives to incarceration without risk to public safety, and effectively identifying those at greater risk of recidivism.

The Commission reports and disseminates to the public the sentencing information it collects and analyzes in several ways. Analyses of the data extracted from the sentencing documents it receives are reported in the Commission's Annual Report and Sourcebook of Federal Sentencing Statistics (Sourcebook). In order to provide the most timely information on national sentencing trends and practices, the Commission also disseminates on its website key

[2] *See* 28 U.S.C. § 994(w)(1), which requires the chief judge of each district court, within 30 days of entry of judgment to provide the Commission with: (1) the charging document; (2) the written plea agreement (if any); (3) the Presentence Report; (4) the judgment and commitment order; and (5) the statement of reasons form.

aspects of this data on a quarterly basis for the current fiscal year, and provides trend analyses of the changes in federal sentencing practices over time.

In fiscal year 2012, the Commission introduced its Interactive Sourcebook. The Interactive Sourcebook allows users to re-create and customize the tables and figures presented in the printed Sourcebook, for example by circuit, district, or state, or by combining several years of sentencing data into one analysis. The Commission expects that the Interactive Sourcebook will improve transparency and accessibility of its sentencing data to the public and expects to add new enhancements to the Interactive Sourcebook in fiscal years 2013 and 2014.

In fiscal year 2012, the Commission began making individual offender datafiles from fiscal years 2002 through 2011 that are available on its website at no cost. This new feature significantly increases the public's access to the Commission's sentencing data because these datafiles typically had been obtained by researchers from an academic consortium for a fee.

Also beginning in fiscal year 2012, the Commission made its prison and sentencing impact assessments available to the public on its website. As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, when the Commission considers amendments to the guidelines, it considers the impact of any changes on the federal prison population. In addition, the Commission often is asked by Congress to complete prison and sentencing impact assessments for proposed legislation. The website contains information starting with analyses completed during the fiscal year 2012 amendment cycle. The Commissions expects to continue in fiscal years 2013 and 2014 to make new prison sentencing impact assessments available.

At the request of Congress, the Commission also provides specific analyses related to proposed and pending legislation using real-time data and analyses of sentencing trends. These assessments often are complex and time-sensitive, and require highly specialized Commission resources. In addition, the Commission responds to a number of more general data requests from Congress and entities such as the Congressional Research Service, the Congressional Budget Office, and the Government Accountability Office, on issues such as healthcare fraud, drugs, immigration, gangs, child sex offenses, and offenses affecting Native Americans. These requests are continuing in response to congressional work on crime legislation in the 113th Congress.

The Commission also provides valuable data to federal judges. For example, the Commission produces unique data and information about each federal judicial circuit and district that form the basis of data compilations that are frequently used during new judge orientation, by chief judges, and for congressional briefings, and are made available on the Commission's website. The Commission also provides to each chief district judge and each chief circuit judge a yearly analysis that compares the sentencing practices of the district or circuit with the nation as a whole. The Commission's ability to provide these analyses on demand and with real-time data provides a unique resource to judges.

The Commission has been able to accommodate the threefold increase in sentencings and to broaden the public accessibility of its sentencing data and analyses without increasing the full-time employee (FTE) positions devoted to data collection and analysis because it has been modernizing its systems over several years. The Commission developed and implemented an

electronic document submission system to enable sentencing courts to submit documentation directly to the Commission electronically. The next phase of this modernization effort, the evolution of the electronic document submission system into a web-based service system, is well underway. By the end of fiscal year 2012, 72 districts were using the web-based system, and all 94 districts now submit sentencing documentation to the Commission electronically on one of these two systems. The Commission also is working to develop means to automatically extract some data fields, particularly those related to offender demographics, as a cost containment measure.

The Commission greatly appreciates the funding it has received from Congress to undertake its modernization efforts in the area and notes that full funding of the Commission's fiscal year 2014 budget request will ensure these systems continue to operate efficiently and effectively.

CONDUCTING RESEARCH

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly analyzes the current and prior fiscal years' data to identify the manner in which the courts are sentencing offenders and their use of the guidelines in that work. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, some analyses are published by the Commission as a resource for the criminal justice community. For example, during fiscal year 2012 the Commission continued its publication series that provides brief overviews of federal criminal cases by issuing two publications for fiscal years 2010 and 2011. The Commission expects to continue this series, which is congressional staff find particularly useful, to continue in fiscal year 2014.

The Commission's research also forms the critical backbone of its reports, specifically recent reports on mandatory minimum penalties, the impact of *Booker,* and federal child pornography offenses. For example, as discussed above, the *Booker* report contained several multivariate analyses and odds ratio analyses to examine the relationship between certain demographic factors and sentencing outcomes. The report also included innovative bubble plot, scatter plot, and box and whisker plots to demonstrate trends in sentencing practices nationally, by circuit, by district, and by individual sentencing judge. Similarly, the child pornography report contained detailed analysis of the criminal sexually dangerous behavior of federal child pornography offenders as well as a recidivism study that tracked the results of offenders for over eight years after their release from prison. The mandatory minimum also contained comprehensive analyses of the use of mandatory minimum penalties time and their impact on average sentences and the federal prison population over time. The research needed to complete these reports is resource intensive and requires significant expertise.

TRAINING AND OUTREACH

As envisioned by Congress in the Sentencing Reform Act, the Commission maintains a robust training and outreach program. The Commission fulfills this statutory duty to provide training and specialized technical assistance on federal sentencing issues, including application of the sentencing guidelines, to federal judges, probation officers, staff attorneys, law clerks,

prosecutors, and defense attorneys by providing educational programs around the country throughout the year. In fiscal year 2012, for example, the Commission conducted training programs in all twelve circuits and most of the 94 judicial districts. In total, the Commission provided sentencing and guideline training to approximately 9,000 people (approximately 1,000 more people than it trained in fiscal year 2011).

In June 2012, the Commission held its annual national training program in New Orleans, Louisiana, with more than 850 attendees, including many new federal district court judges. Commissioners and Commission staff also participated in other numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues. While the Commission will continue to provide sentencing training across the country, the Commission also is developing a more robust program of distance and online learning as part of cost containment efforts and intends to increase the number of sentencing-related webinars and training videos on its website throughout fiscal years 2013 and 2014.

SUMMARY

The Commission remains uniquely positioned to assist the federal criminal justice community, including Congress, in ensuring sound and just federal sentencing policy. Located in the judicial branch and composed of federal judges, individuals with varied experience in the federal criminal justice community, and *ex officio* representatives of the Executive Branch, the Commission is an expert, bipartisan body that works collaboratively with all three branches of government on matters of federal sentencing policy.

As evidenced from the discussion above, demand for the Commission's various work products have greatly increased since *Booker*. The Commission has responded in recent years by placing a high priority on increasing public access to its sentencing data, information, analyses, and training. The Commission has achieved this increased public access in great part by expanding the availability of resources on its website, and the Commission plans to continue this trend in fiscal year 2014 and beyond. Unfortunately, in fiscal year 2013, the Commission's website was the subject of an illegal hacking incident. The incident required the Commission to temporarily take down the site while it underwent a thorough security review. Although the Interactive Sourcebook was not hacked, the Commission also took the opportunity to review and enhance the security of the Interactive Sourcebook, which will soon be brought back online after those enhancements are made. No personal or confidential information was compromised by the incident and the Commission's public affairs staff was able to respond to public inquiries for information while the site was being restored. The Commission has redoubled its security efforts in this area to assure the continued public accessibility of its website and the security of the judiciary's personal and confidential information.

The Commission appreciates the funding it has received from Congress and respectfully submits that full funding of its fiscal year 2014 appropriations request of $17,016,000 will ensure that the Commission can continue to fulfill its various statutory missions in a safe, secure, and efficient manner.

STATEMENT OF RANDALL R. RADER
CHIEF JUDGE, UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
BEFORE THE SUBCOMMITTEE
ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE COMMITTEE ON APPROPRIATIONS
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

March 20, 2013

Chairman Crenshaw, Representative Serrano, and members of the Committee, thank you for affording me the opportunity to submit this statement in support of the United States Court of Appeals for the Federal Circuit's fiscal year 2014 budget request. I am Randall R. Rader, and I have served as Chief Judge of this Court since June 1, 2010.

Located in Washington, D.C., the United States Court of Appeals for the Federal Circuit has exclusive nationwide jurisdiction over a large and diverse subject area. The Federal Circuit hears appeals in all patent cases, all government contract cases, all international trade cases, all government personnel cases, all cases involving monetary claims against the United States under the Tucker Acts, veterans' cases, and many others.

Appeals to the Federal Circuit come from the 94 Federal District Courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims. The Court also hears appeals from certain administrative agency decisions, including the United States Merit Systems Protection Board, the Boards of Contract Appeals, the Board of Patent Appeals and Interferences, and the Trademark Trial and Appeals Board. In addition, the Court reviews decisions of the United States International Trade Commission, the Office of Compliance, an independent agency in the legislative branch, and the Government Accountability Office Personnel Appeals Board.

Fiscal year 2014 promises to present extraordinary challenges to the Federal Circuit, as it will doubtlessly challenge virtually every court in the Federal Judiciary and every agency and department throughout the Federal Government. I recognize the current difficult economic times in

which we all operate, and I appreciate the need to reduce the deficit and contain spending. The Federal Circuit has tightened its fiscal belt and continues to work diligently to control and contain our operating expenses. Where at all possible, the Court is decreasing costs and streamlining practices so that it can continue to support and sustain its judicial mission without having to cause economic hardship to the Court's most important resource, its dedicated and hard-working personnel. We are hoping that even with a Fiscal Year 2013 sequestration amounting to $1,509,000 the Court will not be forced to furlough employees in Fiscal Year 2013. As I mention in a moment, the same will not be true in Fiscal Year 2014.

Under these circumstances and with this goal in mind, the Federal Circuit's fiscal year 2014 budget request totals $33,355,000 which is only $649,000 (or about 2.0%) over the Court's fiscal year 2013 assumed appropriation and Continuing Resolution level of $32,706,000. The Court is making no requests for program increases. It is requesting only sufficient funds to provide for essential ongoing operations of the Court. One hundred percent of the budget increase is to pay for adjustments to the base to help maintain current services. These adjustments include funds for projected salaries and benefits increases for staff, staff promotions and within-grade increases, as well as for general inflationary adjustments and for library services and computer-assisted legal research.

The Court's Fiscal Year 2014 request is $2,158,000 above the March 1, 2013 sequestration funding level of $31,197,000. The Court is hoping that the sequestration level will not be a permanent condition of this Court's appropriation since a $2.2 million shortfall in Fiscal Year 2014 would have devastating repercussions on the Court's staff and operations. While the Court recognizes and appreciates that lawmakers need to cut government spending, the Court also recognizes that the administration of justice may suffer or be delayed if funds are insufficient to keep the Court fully staffed and fully functional. The funds the Federal Circuit is requesting will help ensure that the Court continues to accomplish judiciary goals and fulfills its mission.

As Chief Judge of the United States Court of Appeals for the Federal Circuit, I wish to extend my deepest thanks and appreciation to the Committee for its recognition of the Court's needs through the

appropriations we have received in prior years. Over the years these enacted appropriations have provided the Federal Circuit with adequate funding to support its most critical budget requirements. My hope is that in Fiscal Year 2014 the Congress will again provide the funds to help the Court maintain its current services and operate in an effective and efficient manner. I also wish to assure you that under my leadership and stewardship the Federal Circuit will continue to manage its financial resources scrupulously through sound fiscal, procurement and personnel practices.

Two particular and specific judicial challenges threaten to increase the Federal Circuit's caseload, perhaps exponentially, in Fiscal Year 2014:

First, as a result of the *Leahy-Smith America Invents Act*, Pub. L. No. 112-29 enacted on September 16, 2011, the Federal Circuit expects to see a dramatic and previously unanticipated increase in its patent caseload that will remain at a high level for the foreseeable future. The U.S. Patent and Trademark Office (USPTO) is implementing the America Invents Act (AIA) in a manner that makes it easier for American entrepreneurs and businesses to bring their inventions to the marketplace sooner, converting their ideas into new products and new jobs. The intent of the AIA is to help companies and inventors avoid costly delays and unnecessary litigation, and let them focus instead on innovation and job creation. A number of important provisions of the law did not go into effect until September 16, 2012, 12 months after the law was enacted.

The success of the AIA depends on the Federal Circuit. Unfortunately, the Federal Circuit was ignored by the Act. The Federal Circuit will have to resolve each of the statutory interpretation questions of the new law. In addition, the AIA will provide for clearing a substantial backlog of some 30,000 USPTO cases through creation of a Patent Trial and Appeal Board. All of the appealed cases of this Board will come to the Federal Circuit for review. The work of the Patent Trial and Appeal Board when fully in place is expected to produce an annual increase of as few as five hundred or as many as several thousand additional cases per year for review by the Federal Circuit. The Court is unable to project with accuracy a precise number for the increase of patent cases, which typically are its most complicated and time consuming cases because of the technical

complexity of the patents at issue. Furthermore, because new cases are expected to continue to arrive in the U.S. Patent and Trademark Office, USPTO officials expect the case backlog to increase to as many as 40,000 cases. Consequently, the Federal Circuit believes there always will be a considerable case backlog and a sustained increase in its caseload. The USPTO has more than doubled the number of administrative judges and attorneys in the solicitor's office to handle this immense caseload. The Federal Circuit has not received any additional resources to deal with this approaching tsunami of appeals.

It would be unfortunate if the Federal Circuit would not be able to process these patent appeals from the Patent Trial and Appeal Board expeditiously due to the necessity to furlough staff. The Federal Circuit would be defeating the purpose of the America Invents Act if delays occur in the appeal process which prevent American entrepreneurs and businesses from converting their inventions and ideas into new products and new jobs as swiftly as possible.

Second, sequestration itself could result in a possible flood of furlough appeals to the Merit Systems Protection Board (MSPB) by a large proportion of the hundreds of thousands of federal employees who could be furloughed because of automatic spending cuts. Furloughed employees can appeal these personnel decisions to the MSPB. Subsequently, employees can further appeal their cases to the Federal Circuit. It is impossible to predict with any certainty how many of these appeals might survive MSPB review, but many of the cases that fail are likely to be appealed to the Federal Circuit.

As with the AIA patent case backlog, the Federal Circuit could not have foreseen or prepared for the potential increase of furlough appeals from the MSPB. Nevertheless, it would be unfortunate if the Federal Circuit has to furlough its own employees because of insufficient funds and to delay justice in these MSPB appeals for other federal employees.

Chairman Crenshaw, I would be pleased to provide any additional information that the Committee may require or to meet with Committee members or staff to discuss our budget request in further detail. Thank you.

STATEMENT OF DONALD C. POGUE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE
before
The Subcommittee on
Financial Services and General Government of the
Committee on Appropriations of the
United States House of Representatives

March 20, 2013

Chairman Crenshaw, Representative Serrano, and Members of the Committee:

Thank you for providing me with the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions arising out of the administration and enforcement of the customs and international trade laws of the United States. As you know, the Court has its roots in the uniformity requirement of Article I, Section 8 of the Constitution ("all duties, imposts and excises shall be uniform throughout the United States"), and in that way contributes to the nation's economic strength.

The Court's budget request for Fiscal Year 2014 is $21,973,000. This represents an overall increase of $408,000, or 1.9 percent, over the Court's Fiscal Year 2013 assumed appropriation of $21,565,000. This modest overall increase of 1.9 percent reflects the necessary adjustments to the base in order to maintain current services, fund essential on-going operations and initiatives, provide for appropriate adjustments in pay and benefits, and other inflationary adjustments to the base, including an increase in costs paid to the Federal Protective Service (FPS) for building-basic

and building-specific security surcharges and to the U.S. Marshals Service for the Court's internal security officers.

I would like to emphasize that the Court remains committed, as it has in the past, to an approach of efficiently and conservatively managing its financial resources through sound fiscal, procurement, personnel and internal control practices. Of particular note, the Court has had clean audits for the last several audit cycles. Additionally, in Fiscal Year 2012, because of the Court's very aggressive approach to contract management (reflecting cost savings from assertive contract negotiation techniques and strategic use of the Judiciary's extended procurement authority to enter into multi-year contracts), as well as the existence of unfilled vacancies, including two Judicial vacancies, the Court has transferred $700,000 to the Administrative Office's Judiciary Information Technology Fund. This money was used to avoid delays in implementing the electronic Criminal Justice Act cost-containment voucher processing system.

Furthermore, the Court routinely engages in cost containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference, particularly regarding security costs, equipment costs, technology, contractual obligations, and personnel. This is consistent with the Court's long-standing policy of requesting only funds that are absolutely needed to carry out its judicial responsibilities and of cross-training staff to assure the best use of our resources. The Court will continue this commitment to seek funding only for increases in pay, benefits and other inflationary factors, and for essential on-going operations and initiatives of the Court.

Despite this conservative approach to spending, the Court continues to meet the objectives set forth in its Strategic Plan through the use of its annual appropriation and the Judiciary Information Technology Fund. These objectives provide access to the Court through the effective

and efficient delivery of services and information to litigants, the bar, public, judges, and staff. As a national court, this access is critical to realizing the Court's mission to resolve disputes by (1) providing cost effective, courteous, and timely service; (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and (3) fostering improvements in customs and international trade law and practice, as well as in the administration of justice.

Specifically, technology continues to be a critical component of the Court's commitment to high quality service to its various constituencies. To this end, the Court continues to vigorously implement its information technology and cyclical maintenance, upgrade, and replacement programs to ensure that the Court's infrastructure can support its technological and telecommunications needs in the future. Due to the Court's efforts in this regard, the Court was able to successfully operate remotely after the damage caused to the downtown area in Manhattan after Superstorm Sandy. During the current Fiscal Year (2013), the Court plans to expend funds to: (1) purchase Voice Over IP phones in order to implement an Integrated Telephone System; (2) install WiFi throughout the courthouse in order to enhance network connectivity to wireless devices; (3) migrate from a Netware Operating System to a Microsoft Operating System in order to improve the Court's network facilities; (4) continue its support of its video conferencing system, upgraded data network and voice connections and virtual Private Network System (VPN); (5) upgrade and support existing software applications; (6) purchase new software applications to ensure the continued operational efficiency of the Court; (7) replace computer desktop systems, including monitors and printers in accordance with the Judiciary's cyclical replacement program; (8) maintain broadband services for laptops; (9) support Court equipment by the purchase of yearly leasing and maintenance agreements; (10) provide Court

access to the Judiciary Data Communications Network (DCN) and (11) provide training to the Court's technical staff in order to ensure that staff is kept abreast of current trends in information technology and have the ability to support updated applications. Additionally, the Court will continue to support and implement its cyclical furniture replacement and facilities upgrade programs. Unfortunately, due to sequestration, the Court will not be able to continue with its long standing commitment to provide developmental and educational programs for staff on subjects pertaining to job related skills and technology. When the Court receives funding that will allow it to develop its people, this important objective will once again be a priority.

In Fiscal Year 2014, the Court will not only remain committed to using its carry-forward balances in the Judiciary Information Technology Fund to continue its information technology initiatives and support the Court's short-term and long-term information technology needs, but will also continue its commitment to its cyclical replacement and maintenance program for equipment, furniture, offices, and common space. This program has helped to not only extend the useful life of equipment and furnishings by ensuring their integrity, but also maximize the use and functionality of the internal space of the Courthouse. Moreover, the Fiscal Year 2014 request once again includes funds for the continued support and maintenance of the Court's security systems. Further, the Court will seek to continue its efforts to address the educational needs of the bar and Court staff. Lastly, I would like to emphasize that the Court, in Fiscal Year 2014, will ensure that its efforts in cost saving negotiations of contracts with GSA, FPS, and public/private companies will be continued and will be applied to new cost saving initiatives as well.

Once again, I personally extend my deepest thanks and appreciation to Congress for, historically, recognizing the needs of the Court by providing adequate funding to maintain current

services. I am confident that Congress, in Fiscal Year 2014, will continue to recognize the Court's efforts, as discussed above, to contain costs and expend funds in a conservative, cost-effective manner.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

Mr. CRENSHAW. Judge Hogan, would you like to make an opening statement?

JUDGE HOGAN'S OPENING STATEMENT

Judge HOGAN. Thank you, Chairman Crenshaw, Representative Serrano, members of the committee. I am pleased to appear before you today and present the fiscal 2014 budget request for the Administrative Office of the U.S. Courts. I will refer to it as the AO for shorthand from now on. And I obviously support the entire judicial needs of the judicial branch for the moneys necessary to operate.

About 18 months ago, the Chief Justice appointed me Director of the Administrative Office. I had been a trial judge in the Federal court for 30 years and was pleased that he asked me to take on this position. I have served as Chief Judge of the United States District Court in D.C. here from 2001 until I took senior status in 2008. I then was asked by the court to take over the Guantanamo Bay cases, which I handled on an overall basis managing those cases for the court until the Chief asked me to serve as Director. And my other job is I serve also as a member of the Foreign Intelligence Surveillance Court at this time.

As to the Administrative Office, it was created back in 1939 to assist the Federal courts in fulfilling their mission to provide equal justice under the law. It is not a headquarters of the courts; it has management oversight responsibilities for the various judicial programs and supports the Judicial Conference of the United States, which is our governing body. The Judicial Conference determines judicial policies, we help develop new methods and systems and programs for conducting the business of the Federal courts; we develop and support the application of technology; collect and analyze statistics on the business of the Federal courts for accurate planning and decisions about resource needs and for reporting to Congress, as we are required to do; and we provide financial management service, personnel and payroll support for the judiciary.

The work of the AO has evolved over the years to meet the needs of the judicial branch. Service to the courts has been our core function and remains so, and we provide administrative support to the 25 Judicial Conference committees, over 2,300 judicial officers, and just under 30,000 court employees.

As to sequestration, like the rest of the Federal Government, it reduces the Administrative Office of the U.S. Courts by 5 percent from the fiscal year 2013 CR level. And for the AO, this means a cut of $4.2 million with 7 months remaining in our fiscal year. We are going to meet that shortfall by applying a $1.8 million reduction to nonsalary accounts, which means a 25 percent reduction in our travel, a 50 percent reduction in training, and a 25 percent reduction in office and automation supplies. Additionally, we are forced to reduce funding for salaries and expenses and benefits by $2.4 million. That equates to 15 positions not being filled.

The Administrative Office, really starting back in 2011, has been operating at a reduced staffing level, and we have continued that and aggressively pursued that. We expect to be able to achieve the savings through continued hiring freezes and our employee buyouts and early outs. At this time, because of the cost containment efforts

we have worked on, I do not believe it will be necessary to furlough AO staff under the sequestration for this fiscal year. In the future, it remains to be seen whether furloughs will be required.

But the impact of our support for the courts is considerable under sequestration. One of the things the AO does that is very essential to the court operations is the development and implementation of key information technology systems and programs. We have to slow down or stop our research and development in those areas now. That includes enhancement of critical financial management applications; processing payroll, personnel actions; reviewing court financial operations; supporting probation and pretrial services; and the deployment, finally, of our national Internet-based telephone system, which is a great cost-saver, but will have to be paused this spring.

In addition, the Administrative Office has been very instrumental in helping the courts' overall cost containment efforts. We are committed to continuing that work with our various committees in the Judicial Conference and developing even further cost containment issues along with the Budget Committee that has led the effort to limit the growth in judiciary programs.

As to the Administrative Office itself, our own cost containment, we have been working on an initiative that we started, as I said, back in 2011 that would control costs, help prepare us for future budget constraints. An internal AO Cost Containment Task Force identified measures that could be quickly implemented that have immediate financial impact, and they have included reductions, I mentioned, in travel, printing, publications, descriptions, reducing mobile device costs. And all those cutbacks will continue this year.

But 93 percent of our funding goes to support employee pay and benefits, so by necessity, the longer-term cost containment initiatives are in those areas. Early retirement opportunities that have been made available in 2012 fiscal year will continue to be offered this fiscal year. Policies were established to permit the buyouts as a workforce restructuring tool, and we had 31 buyouts accepted this past fiscal year. During fiscal year 2012, early outs and buyouts resulted in close to $2 million in savings. Hiring was restricted to entry level, or lower end of the pay band, with some limited exceptions. In 2012 fiscal year adherence to this policy, we reduced our costs by $700,000.

We are continuing to review our contractor positions to determine the cost-effectiveness of converting certain positions to temporary government or permanent government positions. We have discovered that contractor positions are very expensive, so 100 of the highest cost contractor positions were identified for conversion to lower cost government positions, for the most part temporary positions. To date we have converted nine contractor positions to government employees with a fiscal 2013 savings of $540,000. This initiative eventually could contribute over $6 million in savings to ongoing projects.

Finally, our budget request for 2014 was built upon the level of available funding under the current continuing resolution, but the sequestration has been applied to the hard freeze of the 2012 level funding now in consideration by Congress, and as Judge Gibbons

said earlier, after the 2013 appropriations are known, we will update our 2014 request accordingly.

As Judge Gibbons recognized, I know this is a very difficult year for you and your colleagues as you struggle to meet the funding needs of the various agencies and programs under your jurisdiction, and we appreciate the challenges that you all face. We hope that Congress and the Administration can agree upon legislation and provide some long-term relief and stability to our budget. Again, I thank you for the opportunity to appear today, and I would be pleased to answer any questions that you have.

Mr. CRENSHAW. Thank you very much, both of you all, for those comments.

[The information follows:]

STATEMENT OF JUDGE THOMAS F. HOGAN, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

March 20, 2013

Chairman Crenshaw, Representative Serrano, and members of the Committee, I am pleased to appear before you this morning to present the fiscal year 2014 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch. Chairman Crenshaw, I also appreciate having had the opportunity to meet with you prior to today's hearing.

First, I would like to join Judge Gibbons in thanking you and your Committee for the support it has provided the Judiciary during the fiscal year 2013 appropriations process – which is still ongoing. We have enjoyed an open dialogue with the Committee as we address issues of mutual interest and I look forward to continuing this relationship in the future.

Nearly 18 months ago, I was appointed by Chief Justice Roberts as the eighth Director of the Administrative Office of the U.S. Courts, the first judge to serve as Director since the AO's creation 74 years ago. I bring to the position more than 30 years of experience as a trial judge and I believe this perspective is valuable as the AO assists the courts in addressing its fiscal challenges. No doubt these are difficult times and the AO must continue its leadership and support in helping the Judicial Branch maintain our tradition of excellence. I am committed to continuing this practice while focusing on ways the AO and the courts can work more effectively and efficiently in this era of cost containment.

We recognize the very tight fiscal constraints in which you continue to operate and appreciate being able to work closely with the Committee throughout the appropriations process. The federal Judiciary has a constitutionally mandated mission that it must uphold and to do so we must have adequate resources. We have been steadfast in pursuing cost-containment measures to cut spending and are requesting the minimum amount necessary to keep our courts open and operating, and our communities safe from potentially dangerous offenders under supervision.

Extension of Temporary District Judgeships

Chairman Crenshaw, Representative Serrano, for the past several years, this Committee has included a general provision in its annual appropriations bill extending by one year temporary Article III judgeships due to lapse in that fiscal year. We cannot thank the Committee enough for its assistance in this regard. Without this provision, we risk losing judgeships in these courts upon the first vacancy that occurs – through death or retirement – after their lapse

date. There are now nine temporary judgeships set to expire in fiscal year 2013 or soon after. The impacted courts are in the following judicial districts: Alabama-Northern, Arizona, California-Central, Florida-Southern, Hawaii, Kansas, Missouri-Eastern, New Mexico, and Texas-Eastern.

Judge Gibbons discusses in her testimony what happened to the temporary judgeship in the Northern District of Ohio when its authorization was not extended during the Continuing Resolution period in fiscal year 2011. In addition, in fiscal year 2005, a temporary judgeship was lost in the Eastern District of California. To this day, it has not been restored. The Eastern District of California has been severely burdened by the loss of this temporary judgeship as the caseload has risen to 1,132 weighted filings per judgeship, the second highest total in the nation. Several of the districts for which we seek an extension, particularly those in Arizona, New Mexico, Florida-Southern, Texas-Eastern, and California-Central, will find themselves similarly impacted if their temporary judgeship is lost. These are some of the busiest trial courts in the nation, and to lose a judgeship in one of these courts would be a detriment to the citizens in that district.

I urge you to include the language in Section 305, a general provision in H.R. 6020, the fiscal year 2013 FSGG Appropriations Bill, in the final fiscal year 2013 Continuing Resolution. The extension of these temporary judgeships is critical to the operation of the federal Judiciary.

Role of the Administrative Office

Created by Congress in 1939 to assist the federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch.

Unlike most Executive Branch agencies in Washington, the AO does not operate as a headquarters for the courts. The federal court system is decentralized, although the AO has management oversight responsibilities for the court security program, the probation and pretrial services program, and the defender services program, among others. The AO supports the Judicial Conference of the United States in determining Judiciary policies; developing new methods, systems, and programs for conducting the business of the federal courts efficiently and economically; developing and supporting the application of technology; collecting and analyzing statistics on the business of the federal courts for accurate planning and decisions about resource needs; providing financial management services and personnel and payroll support; and conducting audits and reviews to ensure the continued quality and integrity of federal court administration.

The work of the AO has evolved over the years to meet the changing needs of the Judicial Branch. Service to the courts, however, has been and remains our basic mission. But, there is no question that the roles and responsibilities of the men and women at the AO are vast and varied. Please let me share with you a few examples of the work performed at the AO. The

AO provides administrative support to the 25 Judicial Conference committees, 2,340 judicial officers, and nearly 30,000 court employees. We perform this mission with 850 employees located in the District of Columbia as well as another 200 staff located in Judiciary service centers in Phoenix, Arizona; Charleston, South Carolina; San Antonio, Texas; and Reston, Virginia.

Information Technology Improvements

The Judiciary's budget is essentially people and rent costs. Approximately 66 percent of the courts' Salaries and Expenses appropriation is used to support employee salaries and benefits – the staff who carry out the work of the courts. Another 20 percent is used to pay rent on 831 facilities and leased space that house the courts and their staff. This leaves little flexibility when looking for areas to reduce spending. Often, funding to support the development and implementation of information technology systems and applications is where the reductions have to be made. Unfortunately, this is an area where it costs money up front in order to save money in the future. In an era of budget constraints, it is a challenge to come up with seed money for IT projects when funding for employee salaries is being cut. We are forced to rise to that challenge, because it is clear that our investment in information technology has greatly improved the work of the federal Judiciary – made the courts more efficient, increased accountability, and significantly improved productivity. Implementing innovative technology applications to help the Judiciary meet the changing needs of judges, staff and the public is a priority of the Judicial Conference. Let me highlight a few specific areas where this has clearly been the case.

Telecommunications Upgrade

Several years ago, with the support of this Committee, the AO embarked on an effort to upgrade the Judiciary's telecommunications system, moving to a next-generation telecommunications service that would enhance communications performance and reliability, and deliver converged voice, data, and video services over the Judiciary's Data Communications Network.

Deployment of the National Internet Protocol Telephone service (National IPT) began in May 2011. The initial goal was to deploy 30,000 devices over five years. However, in light of significant court demand and recognizing the significant pay-off down the road, the AO re-prioritized existing resources to accelerate deployment of the IPT program in order to realize the benefits sooner. By the end of March 2013, the AO will have deployed 22,500 devices – more than two-thirds of the way done. Deployment will continue through the end of April, at which time the program will pause for the remainder of the fiscal year. During this pause, the team will take advantage of newer technology and consolidate core infrastructure into one location, saving a substantial amount of money.

Initial cost models suggested that if 75 to 90 percent of the courts were to take advantage of a national IPT service offering, the initial capital investment – while significant – could be recovered in the first several years, and cost avoidances would accrue thereafter. An initial

snapshot proves this assumption: a sample of 31 locations in 8 districts that have installed 3,200 telephones no longer have to pay a total of $1.3 million in local charges, as these costs are now a part of the national system. Costs incurred by local courts will continue to decrease as their telephone requirements are met by the new system.

Case Management/Electronic Case Files

Perhaps one of the Judiciary's greatest collaborative efforts to improve court operations was the development of the Case Management/Electronic Case Files System (CM/ECF) in 1995. The Judiciary's CM/ECF system allows attorneys to file cases electronically and provides online access to case information. It also provides courts enhanced and updated docket management and allows courts to maintain case documents in electronic form. With the addition last year of the U.S. Court of Appeals for the Federal Circuit, all federal courts now accept electronic filings via the Judiciary's CM/ECF system. By the end of fiscal year 2012, over 41 million cases were on the Judiciary's CM/ECF system, and more than 700,000 attorneys and others had filed documents – pleadings, motions, petitions – over the Internet.

The transition to a Next Generation (NextGen) of the CM/ECF system is underway. The goals are to improve efficiency and integration between the appellate, district, and bankruptcy systems; achieve greater consistency, especially for external users; collect more case-related statistics; and share data with other Judiciary systems. The requirements gathering phase for NextGen ended in March 2012, as groups of judges, chambers staff, clerks, court staff, and AO staff identified and prioritized more than 400 functional requirements. Those requirements elicited more than 6,000 comments from the courts. The project also received input from the bar, academia, government agencies, and others. AO developers are now proceeding under a plan for design, coding, testing, and implementation of NextGen. The initial schedule calls for the NextGen release to begin implementation in March 2014.

Probation and Pretrial Services

The Judiciary also uses information technology to reduce costs and improve the effectiveness and efficiency of probation and pretrial services officers in the field. Since 2001, with the development of the PACTS-ecm (Probation and Pretrial Services Automated Case Tracking System electronic case management) system, the AO's Office of Probation and Pretrial Services (OPPS) has been instrumental in providing information technology to officers that make them more effective and efficient. The implementation of this system covered a span of several years. Prior to PACTS-ecm, all case records were kept in a paper file and created by hand or typewriter. Over the last decade, OPPS has introduced a number of new technologies used to obtain, analyze, and disseminate information about federal defendants and offenders. Following is a chronology of key milestones:

- 2002 - A national online directory was developed that provides our offices with accurate contact information of all federal probation and pretrial services officers, facilitating the ability for officers to communicate with one another regarding inter-district cases.

- 2003 - Mobile devices were introduced allowing officers to carry their caseloads electronically.

- 2004 - Treatment and drug test results were captured and electronically stored from provider systems directly into PACTS-ecm.

- 2005 - The ATLAS (Access To Law Enforcement Systems) application was introduced providing officers with desktop access to criminal history and supervised release records.

- 2006 - The DSS (Decision Support System) data warehouse was introduced providing improved decision making on a national, district and individual officer level through a robust reporting capability. For example, DSS information allows offices to more efficiently allocate resources based on measures of offender risk level.

- 2007 - An electronic document management system was introduced that was integrated within PACTS-ecm.

- 2008 - PACTS Mobile for the Blackberry devices was introduced allowing records to be remotely updated and synchronized with PACTS-ecm.

- 2009 - The "red flag" feature of the Offender Release Report was developed to help prevent an offender from "falling through the cracks" by flagging inmates released from BOP custody and whose sentence includes a term of supervision. The Electronic Reporting System was also introduced providing defendants and offenders with the ability to electronically provide monthly supervision reports, thereby freeing officers from the administrative task of filing such paper-based reports.

- 2010 - The OPERA (Offender Payment Enhanced Report Access) system was introduced providing probation officers with direct financial access to offender payment history and debt information allowing officers to better ensure compliance of court-imposed fines and restitution.

- 2011 - The National Online Directory was upgraded to include an exchange of directories with the Bureau of Prisons and a national interpreter database. The DSS system was also enhanced to include a Geographic Information System (GIS) that provides court management staff with the ability to visualize home locations of defendants and offenders. This technology provides greater effectiveness in assigning cases to officers and responding to events such as Hurricane Sandy. The application provides officers with the ability to easily join caseloads and create driving routes when planning home visits so they can be more efficient and safer when supervising offenders in the community.

- 2012 - iPACTS was introduced which allowed officers to securely carry their caseloads on iPad and iPhone devices without the requirement of an Internet connection, making them

more mobile than ever and further allowing courts to redefine office space needs.

- 2013 - PACTS Generation 3 is being introduced that introduces a single national database that will allow better communication between offices and facilitate more efficient future software enhancements.

The development and implementation of these technologies have revolutionized the work of probation and pretrial services officers. Less time is spent in offices and more time is spent in the community supervising offenders. Officers have everything they need at their fingertips. I am convinced that the deployment of these technologies is a primary reason officers have been able to keep pace with the increased number of offenders under supervision and the increased risk level associated with those offenders. The investments made in these technologies truly pay for themselves.

Judiciary Integrated Financial Management System

Another important investment in IT has been in the technical architecture development to support the Judiciary Integrated Financial Management System (JIFMS). When fully deployed, JIFMS will replace the current AO and court financial accounting system, integrating most of the Judiciary's budget, procurement, and accounting functions. The near-term goal is to streamline financial operations, eliminate costly interfaces, improve data security and controls, and take advantage of today's best technologies and practices, such as using electronic funds transfers rather than paper checks for payments. JIFMS is scheduled for initial testing and deployment to the AO, the Court of International Trade, Court of Federal Claims, and the Court of Appeals for the Federal Circuit as beta sites in June. It will then be deployed to other court units and federal defender offices over the next several years.

Information Technology Security

Government websites are periodically the target of hackers seeking to deface the website or improperly access government information. The federal Judiciary has not been immune to such incidents. Court and AO systems managers, however, successfully counter a wide range of hackers, computer viruses, and other threats on a regular basis. The AO's Office of Information Technology (OIT) works closely with the courts to establish national IT security policies and deploy multiple layers of protective technologies.

IT security, like physical security, is not a single event but rather an ongoing process demanding constant attention. The AO's ongoing vigilance in information technology security is an essential support service to the courts.

Potential Impact of New Immigration Legislation

As focus turns in Congress to comprehensive immigration legislation, I hope the

Congress will be mindful of the impact it will have on the Judiciary. We are following the debate closely and making every effort to keep abreast of proposals so that we may provide relevant comments and a timely impact statement. The Judiciary represents a key component of the administrative, as well as the enforcement, processes and must have the resources to carry out any new responsibilities mandated by the legislation.

Courthouse Construction and the Capital Security Program

Attached to my testimony is the Judiciary's *Five-Year Courthouse Project Plan for Fiscal Years 2014-2018 (Five-Year Plan)*. This latest *Five-Year Plan* sets forth the Judiciary's priorities for courthouse construction funding in each of those years. The *Five-Year Plan* consists of 13 projects. No new funding has been provided for courthouse construction projects since fiscal year 2010. The fiscal year 2014 plan includes four projects totaling $306.4 million. Scheduled for final construction funding in fiscal year 2014 are three projects, totaling $294.4 million – Mobile, Alabama; Nashville, Tennessee; and Savannah, Georgia. In addition, the Norfolk, Virginia project requires $12.0 million in fiscal year 2014 for additional site and design. It is our understanding, however, that the President's Fiscal Year 2014 Budget Request for the General Services Administration (GSA) will include no funding for the construction of courthouse projects on the *Five-Year Plan*. This would mark the fourth year in a row that the Administration has failed to request funding for courthouse construction projects.

As you may be aware, the Judiciary does not request its own funding for the construction of courthouses. Because GSA builds our facilities, these monies come under the jurisdiction of the Executive Branch and are included in GSA's budget. While the fiscal year 2014 request will include no funding for the construction of courthouse projects, we understand that funding will be requested under the Repair and Alterations account to undertake an alternative space plan for the Mobile, Alabama courthouse. Instead of providing the remaining amount necessary to construct a new courthouse in Mobile, Alabama, the GSA will request$36 million for the renovation of the existing building and the construction of an annex to house the court. The Judiciary understands that a feasibility study is currently underway to determine if this is a viable alternative to construction of a new courthouse. The Judiciary hopes the Committee will continue to support the space and security needs of the district and bankruptcy courts in Mobile, Alabama.

The Judiciary continues to support $20 million in funding for the Judiciary Capital Security Program (CSP) within the GSA's Repair and Alteration account. Renovation projects that enhance security are selected for participation in the CSP through an objective and collaborative review process that includes stakeholders from local courts and their judicial circuit councils, the U.S. Marshals Service, the GSA, the Judicial Conference's Space and Facilities Committee in consultation with the Judicial Security Committee, and the AO. This process includes assessing the building conditions and utilization, viability of long-term use, and structural capacity to identify cost-effective solutions that can be implemented in a timely manner. Projects are identified to correct and improve security deficiencies at existing federal courthouses in locations that are unlikely to be considered for the construction of a new

courthouse building.

CSP projects approved for funding in fiscal year 2012 are currently underway in Brunswick, Georgia; Benton, Illinois; Lexington, Kentucky; and San Juan, Puerto Rico. The Judicial Conference's Space and Facilities Committee, in consultation with the Judicial Security Committee, has endorsed five additional locations to undergo capital security studies for potential funding in fiscal year 2013. The studies will address security deficiencies at courthouses in Raleigh, North Carolina; St. Thomas, U.S. Virgin Islands; Texarkana, Texas; Columbus, Georgia; and Monroe, Louisiana.

Once a final full-year Continuing Resolution is enacted, we understand that the GSA's fiscal year 2013 financial plan will include $20 million in continued funding for the Judiciary Capital Security Program.

Impact of Sequestration on the AO

Like the rest of the federal government, sequestration reduces funding for the Administrative Office of the U.S. Courts by 5.0 percent below the fiscal year 2013 CR level. For the AO, this means a cut of $4,171,000 with only 7 months remaining in the fiscal year. The AO will meet this shortfall by applying a $2.1 million reduction to non-salary accounts. This includes a 25 percent reduction in travel; a 50 percent reduction in training; and a 25 percent reduction in office and automation supplies. We also hope to achieve a savings of $945,000 through various contract actions. For example, background investigations will be reduced as a result of decreased hiring projections.

The AO will also be forced to reduce funding for salaries and benefits by $2.4 million, resulting in an additional 15 positions that cannot be filled. This reduction would leave AO staffing at 33 FTE below the 2010 staffing level. Fortunately, because the AO has been operating at reduced staffing levels for the last year, we expect to be able to achieve these savings through a hiring freeze and/or employee buyouts/early outs.

Nevertheless, the impact on the AO's support to the courts will be considerable. Earlier in my testimony I described some of the ways in which the AO supports the operation of the courts. While we will do our best to continue to support the courts, there will be fewer resources to do so. The development and implementation of key information technology programs will slow down. These include the enhancement of critical financial management applications, processing payroll and personnel actions, reviewing court financial operations, supporting probation and pretrial services, and final deployment of the National IPT service.

AO Cost Containment

The AO continues to seek ways to work within a tight budget, reducing costs while maintaining a high level of support to the federal courts. In 2011, an internal AO Cost-

Containment Task Force recommended measures to control costs and help prepare the agency for future budget constraints. Recommendations that could be quickly implemented and have an immediate financial impact were put in place first. These included reductions in travel, printing, publications, subscriptions, and mobile device costs, which continue in 2013.

Ninety-three percent of the AO's funding goes to support employee pay and benefits so, by necessity, many of the longer-term cost containment initiatives are in these areas. Early retirement opportunities were made available in fiscal year 2012 and will be offered throughout fiscal year 2013. Policies were also established to permit the use of buyouts as a workforce restructuring tool and 31 buyouts were accepted. During fiscal year 2012, buyouts and earlyouts resulted in close to $2 million in savings. Hiring was restricted to entry level or the lower end of the pay band, with limited exceptions. In fiscal year 2012, adherence to this policy reduced costs by $685,000. Savings were also achieved in the non-salary area. Expenditures on AO-funded travel and conferences were reduced by $285,000. Increased use of videoconferencing is strongly encouraged in lieu of travel.

In addition to continuing these initiatives in fiscal year 2013, we are reviewing the AO's organizational structure and workforce alignment to identify changes that should be made to eliminate duplicative work, maximize effectiveness, and contain costs. A working group was created to review all contractor positions to determine the cost-effectiveness and feasibility of converting certain positions to temporary or permanent government positions. One hundred of the highest cost contractor positions were identified for conversion to lower-cost government positions, for the most part to temporary positions. This initiative is currently underway. To date, we have converted nine contractor positions to government employees with a fiscal year 2013 savings of $540,000. These savings are being centrally managed by me and will be used for the highest priority needs of the courts. If fully implemented, this initiative could generate over $6 million in savings to ongoing projects.

The AO has also been instrumental in guiding the Judiciary's overall cost containment efforts. We are committed to containing costs and limiting the growth in Judiciary programs.

Administrative Office Fiscal Year 2014 Budget Request

The fiscal year 2014 budget request for the Administrative Office of the U.S. Courts totals $85,354,000. This represents an increase of $1,938,000 or 2.3 percent over the fiscal year 2013 amount provided the AO in the current Continuing Resolution (CR) (Pub. L. 112-175), which we used to build our fiscal year 2014 request. Once Congress completes action on the final fiscal year 2013 appropriation level, we will update our fiscal year 2014 request accordingly and apprise the Committee of changes to the request. Using current assumptions, the AO continues to operate under a no-growth, current services budget – and its actual staffing level has dropped from 887 FTE in fiscal year 2010 to 848 FTE at the end of fiscal year 2012.

In addition to the direct AO appropriation provided by this Committee, the AO receives a portion of Judiciary fee collections and carryover balances to offset appropriations requirements

as approved by the Judicial Conference and the Congress. The AO also centrally manages funds from other Judiciary accounts for information technology development and support services that are in direct support of the courts, the court security program, and defender services.

The requested net increase of $1.9 million for fiscal year 2014 is exclusively to cover base adjustments to maintain current services. This includes an adjustment to base of $1.6 million to cover the estimated loss in non-appropriated sources of funding that will not be available in fiscal year 2014. The AO requests direct appropriated funds to replace these non-appropriated funds in order to maintain the same level of service as provided in fiscal year 2013. We will, of course, keep you apprised of our actual fee collections and carryover estimates throughout the year. If carryover and fee collections change, our need for direct appropriations would also change. We only seek the funding necessary to support current staff in order that they may carry out the AO's statutory responsibilities and serve the courts.

Conclusion

The 113th Congress brings with it several new members to the Committee, and I look forward to working with you and your staff to meet the needs of the federal Judiciary. In the interest of time, I have shared with you only a few examples of the wide array of services and support the Administrative Office provides the federal Judiciary, but I hope you will understand more about the function and responsibilities of the AO during the coming months. In addition to our service to the courts, the AO works closely with the Congress to provide accurate and responsive information about the federal Judiciary.

I fully recognize that fiscal year 2014 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I sincerely hope that Congress and the Administration will agree on legislation that will provide long-term stability to our nation's budget.

Thank you again for the opportunity to appear before you today. I would be pleased to answer your questions.

Five-Year Courthouse Project Plan for FYs 2014-2018
As Approved by the Judicial Conference of the United States
September 11, 2012
(estimated dollars in millions)

FY 2014			Cost	Score
1	Mobile, AL*	Add'l. C	$54.9	59.8
2	Nashville, TN	Add'l. S&D / C	$144.0	67.3
3	Savannah, GA	Add'l. C	$95.5	61.3
4	Norfolk, VA	Add'l S&D	$12.0	57.4
			$306.4	

FY 2015			Cost	Score
1	San Antonio, TX	Add'l. S&D / C	$117.4	61.3
2	Charlotte, NC	C	$165.7	58.5
3	Greenville, SC	C	$78.8	58.1
4	Harrisburg, PA	C	$118.6	56.8
			$480.5	

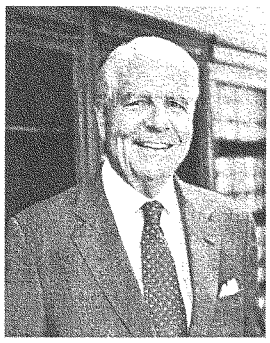
FY 2016			Cost	Score
1	Norfolk, VA	C	$104.7	57.4
2	Anniston, AL	Add'l. D / C	$41.0	57.1
3	Toledo, OH	C	$109.3	54.4
			$255.0	

FY 2017			Cost	Score
1	Chattanooga, TN	S&D	$21.5	37.3
2	Des Moines, IA	S&D	$43.0	35.3
			$64.5	

FY 2018			Cost	Score
			$0.0	

S = Site; D = Design; C = Construction; Addl. = Additional
All cost estimates subject to final verification with GSA.

* Congress provided $50.0 out of $104.9 million needed for Mobile, AL in December 2009



The Honorable Thomas F. Hogan

Director

Administrative Office of the United States Courts
One Columbus Circle NE
Washington, DC 20544

Judge Thomas F. Hogan was appointed Director of the Administrative Office of the United States Courts by Chief Justice John Roberts, Jr., and began his duties as Director on October 17, 2011. He has been a federal judge since his appointment in August 1982 to the U.S. District Court for the District of Columbia. He was Chief Judge of that court from 2001 until 2008, when he assumed senior status. He continues his service on the court.

Judge Hogan graduated from Georgetown University, receiving an A.B. (classical) in 1960. He attended George Washington University's masters program in American and English literature from 1960 to 1962 and graduated from the Georgetown University Law Center in 1966, where he was the St. Thomas More Fellow.

Following law school, Judge Hogan clerked for Judge William B. Jones of the United States District Court for the District of Columbia from 1966 to 1967. He served as counsel to the National Commission for the Reform of Federal Criminal Laws from 1967 to 1968, and was engaged in private practice from 1968 to 1982. He has been an adjunct professor of law at the Georgetown University Law Center and a Master of the Bench of the Prettyman-Leventhal American Inn of Court. In May 1999, Georgetown University Law Center awarded him a Doctor of Laws, *Honoris Causa*.

From 2001 to 2008, Judge Hogan served as a member of the United States Judicial Conference, which is the governing body for the administration of all United States courts. In 2001, he was appointed a member of the Executive Committee of the Judicial Conference and in 2005, the late Chief Justice William H. Rehnquist named him to preside over the Committee as its Chair, in which capacity he served until 2008. He also served on the Committee on the Administration of the Magistrate Judges System from 1987 to 1991 and as Chair of the Committee on Intercircuit Assignments from 1990 to 1994. Judge Hogan served on the Board of the Federal Judicial Center and was a member of the Executive Committee of the United States District Court for the District of Columbia from 1983-1988 and 1994-2001. In 2008, Chief Justice John G. Roberts, Jr., appointed Judge Hogan to serve as a Judge on the United States Foreign Intelligence Surveillance Court (FISC). That same year, in response to the United States Supreme Court's decision in *Boumediene v. Bush*, the Judges of the United States District Court for the District of Columbia adopted a resolution designating Judge Hogan to coordinate and manage proceedings in all *habeas* cases involving Guantanamo Bay detainees.

SEQUESTRATION AND COST CONTAINMENT

Mr. CRENSHAW. One of the things, when I hear, Judge Gibbons, you paint a fairly bleak picture in terms of funding, and on the other side, it is good to hear Judge Hogan talk about some of the things that you all have done, and I think you are to be applauded for that, because most of us on this committee, we think that the continuing resolution is not a very good way to run the railroad, because our job is to have these kind of hearings, to listen to you all, to make priority decisions. And programs that are working well, then we ought to fund them, and if programs are not working as well or wasting money, then we ought to reduce or limit them. But when you do a CR, continuing resolution, you just say, we will just give you the same amount of money you had last year whether you were doing a good job or not. And so we all are disappointed that that is where we find ourselves.

And then you throw in the fact that we have this concept of sequestration, which once again most appropriators would say is a terrible way to try to find reductions in spending, because most things that the Federal Government does are important, but just like in life, some things are more important than others. And it would be a whole lot better if we want to try to reduce spending, that we would look and find the areas that are doing a good job and fund them at an appropriate level, and again, find other areas where there is waste, and we would reduce that, but we do not get that opportunity. It is just across-the-board, pretty draconian, not a very good way to do it, but we find ourselves in that situation.

And I appreciate the fact that you have taken that, because in one sense it is obviously a curse in the sense that you do not have all the money you need, but in one sense it might even be a blessing. As Judge Hogan kind of pointed out, there are things that you have done that are very impressive to say, look, we know we are going to have less money and we are going to have to live with that.

Maybe you might comment on two things. One, specifically some of the things that, as you say, just impact your ability to do your constitutional duty. Does that mean less cases? Some of the specifics about that, I would love to hear. And then, two, some of the things that you are doing to reduce your spending.

One of the things that comes to my mind, I know that there is about a billion dollars in your request that goes for office space. And there is some new office space, I think there were 76,000 square feet of new space, and on the other hand I think over the last year and a half, the number of staff has gone down by, like, 1,900, and I am sure that is part of your process in terms of how to control costs, because that is a lot of money in terms of money that you pay to the GSA all across the country.

So talk about how you are working on that more specifically in terms of just dealing with the space. I imagine it takes time to catch up. You got plenty of space, you got less people, so you got to match up that. That is one area that I am sure you are working on. But could you do that? Could you touch on a couple of the areas specifically so we can understand, you know, how difficult it is, and, two, highlight some of the things that I think Judge Hogan

has already talked about that you have really been able to define areas to save money?

Judge GIBBONS. Okay. I will try to take on both of those assignments, Mr. Chairman.

First, specific impacts of sequestration. All of these are important, but I am going to take a little picture, moving to big picture approach to answering this question. Within the court, the impact on judiciary employees for whom we, of course, feel a great deal of responsibility, we are talking about their loss of income and increased risk because of reduced security, increased risk of working in a court environment.

Moving to the people whom the courts serve, we will try our very best to avoid this, but I think it is almost inevitable that we will see some delays in the handling of cases. And, of course, we have individuals who seek relief in our courts. We also have businesses who seek relief in our courts. Both will be affected by potential delays in civil litigation. In bankruptcy cases, we of course have both individuals and businesses who come before us as debtors, but we also have all the many businesses who are creditors in bankruptcy proceedings who may well be affected by delays in the process.

Obviously, given the amount of our docket that deals with business and commercial activity, there is some economic impact from this, as I believe Justice Kennedy mentioned to you all last week.

Turning to other public policy goals, I have already mentioned the economic situation, but the public policy goal of maintaining the public safety is compromised if we have fewer probation officers to supervise dangerous offenders who are released from prison. Congress has expressed the public policy goal of disposing of criminal cases quickly through the Speedy Trial Act. We would certainly hope that we would be able to dispose of cases in the manner that the Act requires, but that is in jeopardy if delay is occasioned. The remedy, of course, if the Speedy Trial Act is violated, is dismissal of the indictment. That will come about not only because of internal-to-the-courts issues, but also because of the situation that has been mentioned with respect to the Federal defenders and their resource needs. They may simply not be able to step up to the representation of criminal defendants in as timely a manner because of their own personnel resource scarcity.

The public policy goal of providing representation for indigent defendants, a public policy goal that is incorporated in our Constitution, not merely in statute, will be compromised by these cuts.

And, finally, the biggest picture issue of all is that the place that the courts have held in our democracy is jeopardized. The Constitution envisions a strong and independent judiciary that can handle the cases and controversies that come before it. I am not a fan of hyperbole and I avoid it, so it is no hyperbole when I say that we have deep concern about our ability to fulfill our constitutional mission.

Now, those are the sequestration impacts, big to small—small to big.

Turning to cost containment and more specifically the space situation, we have actually, lest it seem as though cost containment is something we began to do in response to sequestration or the

threat of it or began to do recently, we have had a very aggressive cost containment effort since 2004. And I will not go over all of our past accomplishments, and I will refrain from patting ourselves on the back, as we have done in past committee hearings, but it has been there, it has been in place. But we, of course, have a lot of new things ongoing, too.

While we have done a lot of things in space over the years to control the growth in that account, of course the issue of the day is downsizing our space as our personnel have decreased. And also there is room for downsizing as a result of our use of technology. And we intend to do that. The problem is, it is hard to do it as quickly as the budget cuts have come, because much of the space that has been freed up by downsizing and technology is interior space, and we cannot just say to GSA, we have a little office here, please come take it. Steps have to be made to make it marketable, funding is required to move folks around, and in a constrained budget, that is hard to do. And GSA may be reluctant to fund space reduction efforts, given its own constraints and given the expense of doing it. So the whole process is simply slowed by that, but nevertheless we are working on it.

Everything has to have a name within government, and I fear the judiciary has not avoided that trend. We have something called the Integrated Workplace Initiative that is designed to downsize our workspace and make it a different kind of workspace, really because of the flexibility that technology has given us with respect to when and where work can be done. Again, money is required, though, to outfit the workplaces to meet this new sort of model.

Other areas we have been trying to address, the closing of nonresident courthouses—a very difficult thing to do. We have gotten some of them closed. We need to continue to do that. We are looking hard at our libraries and whether we have excess space in the libraries and whether we might downsize there as more and more legal research is computerized as opposed to being done in the books that line the shelves. We have provided a little bit of a financial incentive to courts that release space through our circuit rent budget, providing them a little bit of a credit, hoping that we can get more courts to step up and say, hey, I have got this space, let's figure out how you can take it, GSA.

That is what we are doing in the space area. We have many other cost containment initiatives, and I am happy to address them now or later, but if your particular interest at this point is space, I will stop.

Mr. CRENSHAW. Well, thank you very much. And I think we all applaud the efforts you are making on a farsighted basis, and I just hope some of the other agencies have had the foresight that you have had that in these difficult times make it a little more bearable. So, again, thank you for that.

Mr. Serrano.

SEQUESTRATION CUTS IN THE DEFENDER SERVICES PROGRAM

Mr. SERRANO. Thank you. And once again, thank you for being here. I am going to once again discuss with you the whole issue of the public defenders and my concern that the program may be hurt to a point where it cannot meet its constitutional responsibility.

You know, we spend a lot of time in this Congress, and it is fine, I think it is proper, discussing, you know, our country versus other countries and our great democracy and our form of government. Notwithstanding how many people on TV may knock it on a daily basis, I still think that a lot of the world would like to have this system in place, and we could discuss so many things about it. But one of the ones that always stands out to me, and I am not a lawyer, but one thing that stands out to me is the fact that a person of no resources or very low resources can still get counsel and be protected, and we can try to give that person the fairest trial possible. And that is something that is different about us from a lot of other countries. So I am concerned about ensuring the rights to counsel for indigent defendants even in these difficult budget times.

Are you, Judge Gibbons, concerned about the effects funding cuts will have on the Federal public defender program? And what, if any, flexibility does the judiciary have to shift funds around to help this important program?

Judge GIBBONS. We are certainly very concerned. Part of the impact in that program comes from the fact that even more than the salaries and expenses account, that particular account is so heavily personnel and rent. It is about 90 percent, making the cuts in that account very difficult. We estimate that employees in the Federal defenders offices will be furloughed 1 day a week under sequestration. Because all the accounts are so hard hit, it is very difficult, as you might imagine, to say we would shift funds. Certainly once our 2013 appropriations are finalized, we will look to see if there is a way we can help the defender services account.

Last week a number of judges were in town for the meetings of the Judicial Conference and for related meetings, and in those various meetings it was heartening to me to see the concern that judges and the court managers who were here expressed and their willingness to look at ways that the courts could help the defender offices, not necessarily by shifting funds, but other mechanisms which we really have not even begun to discuss yet.

These might be problematic to the extent, you know, it is important to the defenders not to be seen as controlled by the courts. We appoint counsel in these cases, but then they have an independent duty to represent the client. I mean, the lawyers are not doing what the judges tell them in the cases, obviously. And so we have got to explore, find alternatives with that in mind, but I think that we will be discussing that some more.

Mr. SERRANO. Now, at the end of one of your statements, you said you are concerned that the courts—the courts, I believe you were speaking to—cannot meet their constitutional mandate. Is that a more difficult situation when it comes to the defenders, or is it across the board that you have this feeling?

Judge GIBBONS. Certainly the defender program is not the only area in which we think our constitutional mission is in jeopardy. As you know, we do not have extra programs that can be lopped off. Everything the courts do is something that we are required by the Constitution or statute to do. But certainly the defender program is perhaps the most immediately affected program in a very grave way.

Mr. SERRANO. Right. Well, when his turn comes up, Mr. Quigley will be asking a much more——

Mr. QUIGLEY. Similar.

Mr. SERRANO. Smart?

Mr. QUIGLEY. Similar.

Mr. SERRANO. Similar, but more pointed questions, because I am going to do something he will hate me for, and that is mess up his presentation by telling you that he was a public defender.

Mr. QUIGLEY. Private attorney.

IMPACT OF SEQUESTRATION ON THE JUDICIARY'S IT PROGRAM

Mr. SERRANO. And so we commend him for that.

Judge Hogan, a similar question to you. The impact of sequestration on the Administrative Office of the Courts will be considerable, as noted in your testimony. In particular, you note cuts will have a long-term cost in regard to missed opportunities; for example, reduced IT expenditures. In your letter, you say that the Federal Judiciary cannot continue to operate at such drastically reduced funding levels without seriously compromising the constitutional mission of the Federal courts. How long can the courts continue to operate under this extreme budget pressure, one of the most troubling aspects of sequestration for the Federal Judiciary, in your opinion?

Judge HOGAN. Thank you, Congressman Serrano. We are concerned as to the information technology development. It may be somewhat surprising, but I believe the courts have become one of the most tech savvy workplaces of all the government structures. We have developed, particularly in probation and pretrial, automation services that allows them to reduce their office space greatly, utilize mobile technology with all their records and files when they visit their clients, et cetera, to be available, and very good reporting systems.

The same is true throughout the courts, not only in the legal research systems, but on our financial systems, our statistical recordkeeping systems. And what we are concerned about, our director of IT, Joseph Peters, has developed a very good strategic plan for the next 5 years on how to integrate some of our systems together to save money and reduce our expenses greatly. Some of that is going to have to come to a halt.

I had referenced our telephone system. We had been putting in a new Internet-based telephone system in the courts. We had a goal of putting in 30,000 pieces of equipment for the courts in 5 years. In the first 2 years this operated, it was so popular with the courts, we put 22,000-plus in, almost reached our goal in 2 years rather than 5 years. We are going to have to bring that to a halt later this Spring because the money is not going to be there because of sequestration to complete the system that we wished. And it saves the courts a lot of money by having this integrated phone system. That is one example.

I think we can still meet our constitutional duties in the courts by providing services that are required. It will just be slower and more time consuming, and we will eventually pay the price in years to come when we have not developed our new automated systems we are working on now because of the delays in getting them done.

The immediate impact is somewhat severe, but the future impact we are not sure yet, but I think it will be limiting us in the future to do the work the way we feel we can do it. That is just one example as to the problems with the sequestration on the IT structure that we have.

Mr. SERRANO. Right. Thank you. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Diaz-Balart.

CYBERSECURITY AND THE USSC WEBSITE HACKING

Mr. DIAZ-BALART. Thank you very much, Mr. Chairman.

Good to see you all. Thanks for being here.

Actually a question on a different vein, the issue about cybersecurity and cyber threats, and it is something that obviously the private sector and, frankly, all the Federal Government has been highly subjected to recently. And recently the U.S. Sentencing Commission's Web site was hacked on two occasions by the group Anonymous. And could you just give us your understanding as to how bad that was, what was compromised, and also what measures have been taken or can be taken to try to stop that from happening again, if at all possible?

Judge HOGAN. I will be pleased to talk about that. Thank you for that question. Cybersecurity is a considerable problem for the courts with the type of information that we contain in our records, and we are very sensitive to that.

I will address first the Sentencing Commission issue. I got rather involved in that and I can talk to that, and then our national program of security I can address as well. And with my background in the FISA Court, I must tell you that I am very sensitive to cybersecurity, that is one of the most serious problems that the FISA Court works on.

On the Sentencing Commission, there was a Friday night attack, which had been identified, by this loosely organized group called Anonymous. Frankly, I think they were trying to attack the Justice Department. I think they thought the U.S. Sentencing Commission was part of the Justice Department. They found a failure in their security that they had, and they were able to intrude and bring it down.

Their security contractors (they had a private security contract) felt they had cured the problem and put it back up again on Saturday. Anonymous had managed to arrange it such that they could get right back in again, and they did again on Saturday, and this time they took it down and embarrassingly made the page, when you went onto it, refer you to some computer satellite game or something, and the Sentencing Commission site was destroyed.

That caused considerable concern. There was nothing taken from their public Web site that had personal, confidential information or any links. They could not go into their operating systems. So they did not compromise the entire system, but they destroyed the Web site.

The AO then was sought by Judge Patti Saris, the Chair of the Sentencing Commission, to help, and we provided technical assistance. We made a number of security improvements. We are now temporarily hosting the Commission's Web site. We put it back up.

It took quite a while, almost 2 weeks to get it restructured. And we are now exploring with the Commission an appropriate and secure long-term hosting arrangement. We can take it over, but it is going to have to be done with some understanding and how we are going to do this. I will not go into the security that was enhanced, but they have enhanced it, and it has withstood their attacks at this point.

As to overall national security policies of the court system, we have developed, and continuously monitor 24/7 programs to advise us of any malicious activity, attacks. We have programs that go out to the courts constantly advising them of security patches to install. In fact, the attack on the Sentencing Commission was successful because their contractor had not made a patch that they had been told to make, unfortunately.

At the local level, we have licensed security software for end point protection, we have annual security awareness programs. And I, particularly with my background, have been very concerned. I have a weekly report from my IT people as to security attacks against the judiciary as a whole. And we have been constantly attacked, particularly by Anonymous for almost every Sunday evening in the last several months, and it has continued. They have not been successful against the courts. There was one cyberattack in the Eastern District of Michigan, which caused a problem for a few hours that we resolved, but other than that, there has been no successful attack against the judiciary—I am knocking on wood—that has yet to occur.

We are very sensitive to that. We do find, unfortunately, constantly, because of people that come to the courthouse with their laptops and plug in to use it while they are in court, our interns come in, some other people come in, and they can introduce malware from their own computers. We are very sensitive to that and we have programs that pick that up, and we constantly warn courts and advise them: We have discovered on your system, there is some malware that has been introduced. You must clear it up immediately. And that is constant, our service on that.

We have also worked with Homeland Security and with the Department of Defense and with the FBI on continuing our security, and work with them closely together to make sure that we remain protected. We are very cognizant of the sensitive materials in our court system, which should not be made public, not only in criminal matters, very sensitive criminal matters that are ongoing, but cases that involved classified information, that type of thing. So we are very sensitive and we are trying to do the best we can in the cybersecurity area, and I think so far we have been fairly successful in that. That is one area that we are protecting as much as possible under sequestration, not cutting the budget.

Mr. DIAZ-BALART. Thank you.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Quigley.

DEFENDER SERVICES PROGRAM

Mr. QUIGLEY. Thank you, Mr. Chairman. Just for the record, I was not a public defender, I was a private defense attorney. I al-

ways tell folks, the highest conviction rate in the county. It is funnier if you actually practice law, I guess.

Let me ask a little bit more about the public defender program, the Federal defender program. And, Judge Gibbons, if you could, just for the public's understanding, people in court are defended by their own attorney that they hire, but they are also defended by people paid for with the public's money. Could you just briefly explain the different ways that can happen?

Judge GIBBONS. Well, of course, if a defendant can hire his own attorney, then the Federal defender offices and the panel attorneys do not become involved, no public moneys are involved in the representation. If the defendant is determined to be indigent, then an attorney is appointed by the court.

We have found in the Federal system that the way to provide the best and also the most cost-effective representation is to set up Federal defender offices in the various districts. There are Federal defender offices in virtually all the districts.

Mr. QUIGLEY. And are these full-time employees?

Judge GIBBONS. These are full-time lawyers. They are supported by non-lawyer staff. There is a Federal defender who heads the office in each district.

Mr. QUIGLEY. Judge, if I could interrupt. Why would they appoint someone versus using that office?

Judge GIBBONS. Well, because, two reasons. If there is a multiple-defendant case or otherwise a conflict for the Federal defender's office in representing the defendant, then somebody else has to be appointed. And the courts maintain, each court maintains a panel of attorneys who have agreed to accept such appointments and in most cases have been screened by the court to meet certain qualifications.

There has been another practice that has triggered that private appointment, and it is one that we have been concerned about from a cost standpoint, but there has been another practice that when the Federal defender's office reaches a point at which it believes it cannot accept more appointments, in some districts the Federal defender has gone to the judges and asked the judges to appoint, for some period of time, private attorneys. We do not think that there is anything wrong with that practice, except we want to make sure that the resources of the defender's office are fully exhausted before that happens.

Mr. QUIGLEY. Well, let me ask you as we get closer to the main points here, the demand currently, what I said when we talked to some of your colleagues the other day was that a downturn in the economy tends to have an uptick in people who need to have someone appointed, because they do not have the resources. I do not know if you have noticed that trend of greater demand at the same time or just an uptick in crime, perhaps?

Judge GIBBONS. You know, I mean, we have had some increases in representations, but truthfully it is not the usual defendant in Federal court who has ample resources to hire his own lawyer whether the economy is good or bad.

Mr. QUIGLEY. What is the percentage?

Judge GIBBONS. So there is probably some reaction to the economy, but your typical defendant is not among our most affluent citizens.

Mr. QUIGLEY. What percentage of them are currently incarcerated when they are in that position, when they are on trial, and what percentage, to your knowledge, are using some help from the defender's office or appointment?

Judge GIBBONS. You know, I am not sure that I have those. I mean, we can certainly get those figures for you.

[The information follows:]

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following information:]

Regarding pretrial detention rates, in 2012 72 percent (71,214 of 99,066) of all defendants were detained pending trial. These figures include defendants awaiting trial on immigration charges. Because defendants charged with immigration offenses are considered a flight risk they are typically detained pending trial. Excluding immigration cases, the pretrial detention rate drops to 57 percent (36,050 of 63,795).

Regarding the percentage of defendants requiring defense counsel under the Criminal Justice Act, approximately 90 percent of federal criminal cases have appointed counsel. Federal defender organizations typically are assigned in about 60 percent of appointments under the Criminal Justice Act, and private panel attorneys are appointed in the remaining 40 percent of cases.

Judge GIBBONS. Off the top of my head, I do not know. Somebody may pass me a note in a few minutes and tell me.

Mr. QUIGLEY. I do not see anybody scribbling right now.

Judge GIBBONS. So maybe I will be able to help you out.

Mr. QUIGLEY. Sure.

Judge HOGAN. If I can just chime in for one thing. I know that about 90 percent of the criminal cases in the Federal courts are represented by either Federal public defenders or what we call Criminal Justice Act attorneys appointed under the law.

Mr. QUIGLEY. Sure.

Judge HOGAN. So maybe about 10 percent are retained counsel.

PANEL ATTORNEY RATES

Mr. QUIGLEY. Right. And let me tell folks, and you can echo this or not, those appointed are not paid lavishly. I would say most that take those cases do so partially because it is, I guess, additional income and it is something they think is the right thing to do. But no one is getting rich, either, defending these cases as they are appointed.

Judge GIBBONS. They are paid substantially less than they would charge your typical paying client. We worked really hard for a number of years with this subcommittee to get that rate up to its current level, but it still is nowhere near market rates.

Mr. QUIGLEY. And has there been any analysis of how that has affected, as diplomatically as I could say, the quality of representation?

Judge GIBBONS. During the years when we were trying to obtain an increase, I mean, there are several years on that, but we did do some surveys to try to determine the extent to which the limited pay available was affecting willingness to serve and the quality of counsel. And obviously one of the concerns we have about the sequestration period and the delay of payments to private attorneys

is that more and more attorneys will become unwilling to accept these appointments if they are not going to be paid in a timely manner. And that is of real concern to us.

If you will bear with me just a minute, as I mentioned earlier, the two parts of this account really interact with each other, because to the extent the Federal defender's office does not handle a case, there is a need for private attorneys to handle that case.

Mr. QUIGLEY. Sure.

Judge GIBBONS. —The two accounts play against each other, and the deferrals on the private attorney side, the CJA side, could be very problematic for us. So that is not much of anything other than a very short-term answer to the problem of adequate appropriations for the defender offices.

Mr. QUIGLEY. Thank you, Mr. Chairman. Thank you.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

TEMPORARY DISTRICT JUDGESHIP EXTENSIONS

Mr. YODER. Thank you, Mr. Chairman.

Welcome to the committee. Thanks for your testimony today. Glad to have you here.

Judge Gibbons, in your testimony on page 4, you discuss your request for a CR anomaly, which is a no-cost anomaly to extend the authorizations for nine temporary district judgeships that are at risk of being lost. If a judgeship vacancy occurs in a district after a temporary judgeship authorization expires, that judgeship is permanently lost. Kansas is one of those areas.

Can you discuss with the committee the immediate impact that would occur in jurisdictions where a no-cost anomaly in the CR had not been included, what the potential impact to those jurisdictions would be through a death or retirement without proper language?

Judge GIBBONS. Well, obviously, if the judgeship is lost the cases have to be shifted to other judges. And that really creates, obviously, resource imbalances and difficulties in handling workload within the district.

In Kansas, for example, the evaluation is that a permanent judgeship is needed. But in the absence of a bill creating permanent judgeships, the extension of the temporaries is very important in order to get the workload in that court handled appropriately.

Mr. YODER. And the scenario, then, without proper verbiage going forward, would be if there would be a death or a retirement, that judgeship would be lost, there would be no provision to replace it, and it would have to be recreated through either new legislation creating a permanent judgeship or a new temporary judgeship. But in the meantime, there would be no mechanism to fill that vacancy——

Judge GIBBONS. Right.

Mr. YODER [continuing]. Because of the statute.

Judge GIBBONS. Right. I think I am correct about this, and I know I will be corrected if I am incorrect, I think the proposed language that tries to adjust the period of these temporary judgeships so that we can avoid—I believe that your judgeship lapsed in November of 2012—and avoid the situation where you have got these lapses occurring during the period typically covered by a continuing resolution.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following information:]

Judge Gibbons was correct in her statement that the temporary judgeships extensions requested by the Judiciary would extend the judgeships beyond the typical period of a continuing resolution (first quarter of the fiscal year).

Subsequent to the hearing, the "Consolidated and Further Continuing Appropriations Act of 2013" was enacted on March 26, 2013 (P.L. 113-6) and included the temporary judgeships extensions. Below is a table with the new authorization dates for the nine temporary judgeships that were extended.

Authorized Temporary Judgeships in the U.S. District Courts

Federal Judicial District	Created by Public Law	Date Temporary Judgeship Filled	Temporary Judgeship Authorization (In Years)	Previous Authorization Expiration Date	Full Year CR (PL 113-6)	
					Extension Provided (In Years)[1]	Revised Authorization Date[2]
Alabama, Northern	107-273	9/17/2003	10.0	9/17/2013	1.0	9/17/2014
Arizona	107-273	7/8/2003	10.0	7/8/2013	1.0	7/8/2014
California, Central	107-273	10/27/2003	10.0	10/27/2013	0.5	4/27/2014
Florida, Southern	107-273	7/31/2003	10.0	7/31/2013	1.0	7/31/2014
Hawaii	101-650	10/7/1994	18.0	10/7/2012	1.5	4/7/2014
Kansas	101-650	11/21/1991	21.0	11/21/2012	1.5	5/21/2014
Missouri, Eastern	101-650	11/20/1993	20.0	11/20/2013	0.5	5/20/2014
New Mexico	107-273	7/14/2003	10.0	7/14/2013	1.0	7/14/2014
North Carolina, Western	107-273	4/28/2005	10.0	4/28/2015	-	4/28/2015
Texas, Eastern	107-273	9/30/2003	10.0	9/30/2013	1.0	9/30/2014

[1]Reflects the no-cost extensions requested by the Judiciary in the FY 2013 full year continuing resolution. The subsequent enactment of the Consolidated and Further Continuing Appropriations Act of 2013 on March 26, 2013 (P.L. 113-6) included the temporary judgeship extensions.

[2]A district judge vacancy occurring on or after the authorization expires cannot be filled and the temporary judgeship is lost.

Mr. YODER. So that is something we want to continue to work with you on to ensure that we have the right language to protect those positions. And so I appreciate your——

Judge GIBBONS. I believe our staff has worked hard at trying——

Mr. YODER. We know they have.

Judge GIBBONS [continuing]. To make sure that the appropriate language is in the resolution.

COST CONTAINMENT

Mr. YODER. Thank you for that. Look forward to working to ensure that that occurs going forward.

I want to talk a little bit about cost containment and what we can do to assist the judiciary to have opportunities to save money. And so, you know, I certainly would appreciate your thoughts on statutes or requirements or rules that the Federal Government has in place that we could make modifications to that would allow the judiciary to save money and allow them to have the flexibility to be better stewards of tax dollars, which, of course, all of us want.

Judge GIBBONS. We have begun to think about and to talk about structural changes. And there are some that we know of that could make a difference, but we are not certain that all of them would be good ideas. I mentioned some of these to you only as a way of sort of conceptualizing how we might think about this differently if we really wanted to turn things upside down.

Our structural issues do drive our costs. We have 94 district courts and the corresponding number of bankruptcy courts. I do not know that any structural change in the number of district courts we have is advisable, but if we were to consider it, you were to consider it, I am pretty sure that you would encounter many of the same obstacles we encounter when we talk about closing a courthouse in a particular locality. So I think it would be a difficult thing to do.

One thing we have talked about doing is consolidation of district and bankruptcy clerks' offices, and there are differing views within the judiciary about whether that is a good idea or not. But that requires legislative change.

Mr. YODER. If I might, do we have any idea what the savings on that would be? Because you would essentially consolidate 94 clerk offices across the country.

Judge GIBBONS. There would be some. I mean, there would be some. I cannot quantify it for you now. We could try to give you a ballpark figure if we did it for every court. But there would definitely be some savings. I will talk just in a minute about a way we are trying to address the same problem without legislative change——

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following information:]

There are 94 district courts and 90 bankruptcy courts in the federal court system. There are currently four judicial districts that have consolidated their district and bankruptcy clerks of court offices, leaving 86 districts that are not consolidated.

There are many factors that must be taken into account before considering consolidation, including the number and geographic dispersion of court facilities within a district, and the number of judges and staff in a district. Also, as Judge Gibbons stated, there are differing views within the Judiciary about whether consolidation is a good idea or not. Further, under 28 U.S.C. §156(d), each consolidation requires Congressional approval.

To respond to Rep. Yoder's specific question, assuming it is possible and makes sense to consolidate the remaining 86 districts, and assuming Congress approves the consolidations, there could be savings associated with reducing the number of clerks of court by 86 positions, generating savings of approximately $19 million. If consolidation in these 86 judicial districts resulted in efficiencies that reduced staffing needs by 5 percent, a reduction of 450 positions and $49 million in savings would be possible. Additional savings over the longer term may be possible from the consolidation of space and computer operations but there would be upfront renovation and relocation costs associated with achieving these savings. It is important to note that these estimates are only rough approximations and represent maximum consolidation on a national basis, a goal that may not be realistic or desirable given the unique circumstances of each judicial district. At the request of the House Appropriations Committee the Government Accountability Office is currently studying the consolidation issue and its report on this topic may include a detailed analysis of savings that could be achieved through consolidation.

Since July 2011, clerks of court offices and probation and pretrial services offices have lost 1,800 staff, a 9 percent reduction, and courts will have to continue to downsize in fiscal year 2013 in response to sequestration. Consolidation could be a tool used to partially absorb staffing losses from sequestration cuts while maintaining a high quality of services, however, it is possible that on a national basis staffing losses from sequestration cuts may exceed the staffing efficiencies that would be achieved through a more strategic consolidation of district and bankruptcy clerks offices.

The consolidation of district and bankruptcy clerks offices is governed by statute and Judicial Conference policy. Under 28 U.S.C. § 156(d), "The office of the bankruptcy clerk of court may not be consolidated with the district clerk of court office without the prior approval of the Judicial Conference and the Congress." As the Judiciary continues to look for ways to economize and do more with less, it would streamline the process if the sole authority to approve consolidations rested with the Judicial Conference of the United States.

Mr. YODER. That would be great. Thanks.

Judge GIBBONS [continuing]. In terms of cost containment. But before I leave my list of the things that might be changed, you know, we pay our rent to the General Services Administration. And although sequestration has affected us, we do not receive any discount on our rent. And we have never been certain that that whole arrangement is the one that makes the most sense in terms of efficiency. And you will hear a lot of dissatisfaction in the judiciary about that arrangement and the way it operates.

We also, as you know, pay charges to the Federal Protective Service for providing protection in our buildings. And while we have managed with GSA to develop a good system of validating our rent bills, we have been having trouble validating the bills we receive from the Federal Protective Service. So that might be another area in which to look.

We have for a long time now, though, tried to work around our structure and to bring about cost containment, accepting that our structure is as it is. We have had for years means of getting judicial resources to the areas that most need them through our Committee on Inter-Circuit Assignments, through visiting judge programs that operate more informally within circuits, and through just a whole lot of help from all parts of the country to the Southwest border courts, which have had so much difficulty with their caseload.

But in the area of, you know, court operations, one of the biggest areas we are emphasizing right now for cost containment is the concept of shared administrative services, meaning that courts could share functions like human resources, information technology, procurement, finance, budget, property management, and that that might be a more efficient way to do things than for each court to have its own separate folks doing that. And we have removed internally the barriers to courts doing that so that courts are now free to share without regard to district lines or court lines or what type of court unit, without regard to geography.

And so that is one of our primary areas of emphasis. We have had each court do a plan telling how it intends to share services. And we are beginning to look just initially at whether there are any other ways in which we can share services despite our construction.

I have been reminded that the GAO is looking at the consolidation issue with respect to district and bankruptcy courts at the request of this subcommittee, and we are interested to see what their recommendation would be. And they will probably attempt to quantify whatever savings might accrue. Whether we will agree with their assessment or not, I do not know, but we will see.

REDUCING SPACE NEEDS AND RENT COSTS

Mr. YODER. Thank you for that. And I appreciate the initiative you are taking in this regard to figure out ways to reduce costs. And certainly quite often we deal with sort of a hide-the-ball issue in Washington where it is hard to get agencies or entities to talk about how they might save costs because that may mean they get less money. And so we appreciate you taking initiative. I always appreciate an approach where we are working together to find

ways to find savings for taxpayers in a way that there is cooperation. And so it is a good relationship.

I did want to ask, just briefly, Mr. Chairman, one final question related to this topic.

That is in your testimony on page 5, where you say that one of the judiciary's biggest cost containment successes has been reducing your space needs and rent costs. You say the GSA's cooperation is essential, though, to your ability to reduce space. You will need them to work with you on space reduction, including taking back excess space from you in a timely manner. We just had the GSA in this committee yesterday. But I guess I would ask, is that working and what can we do to help in that regard?

Judge GIBBONS. Our relationship, day-to-day relationship with GSA, has actually been a fairly productive one over the last several years, and that is at the national level, although sometimes there are frictions that occur with respect to particular projects and particular courts. So, you know, I would describe that as the overall nature of the relationship. They have worked with us in some ways to hold down our costs over the years. But still just the whole structure is one that gives us a lot of trouble, and it is a situation in which, you know, we can control to a limited degree whether and when we give up space, but we cannot control the selection of our space, for the most part, we cannot control the annual increases. And yet this is an item that we must pay. Inherent in the relationship is some difficulty even if we are working very, very well with the GSA officials on a day-to-day basis.

Mr. YODER. Thank you for your testimony.

Thank you, Mr. Chairman.

TERRORISM TRIALS

Mr. CRENSHAW. Thank you. I have one final question. I think Mr. Serrano might have one. And this is more asking for an observation. We have talked a lot about cost containment and you are to be applauded for so many things that you have done. I want to ask you about these high-profile terrorism trials you read about from time to time. I noticed that the administration has decided to bring Osama bin Laden's son-in-law to the United States to have a trial.

And I know you do not decide, you know, how or when foreign terrorists are going to be tried. And I am sure that the judiciary will do everything they can to make sure it is a fair trial and the Federal Marshals will provide security. But it seems to me that that has got to impact the day-to-day operations. And I do not know how often this happens. But when we are talking about limited resources and how every dollar counts, what is your observation about the impact those kind of high-profile terrorist trials have on the normal operations of the court? For instance, seems like you have to have more security for the judges, for the jurors. And I guess the Department of Justice shares in that. But there have got to be some increases in expenses.

And then, for instance, if you have a high-profile trial going on, do you have to suspend some of the other activities because all that commotion that goes on around the court? Just a brief comment on your observations about the impact that these would have on our operations normally.

Judge HOGAN. Yes. Thank you, Mr. Chairman. I have had some personal experience with that in my work in the D.C. Court here, in the Federal court, and am familiar, obviously, as Director of some of these issues.

They do have quite an impact upon the courts. There is no question about that. And the high-profile terrorism case does provide additional challenges to the normal operation of the court system. It does not paralyze the court. The other judges still do their work. It makes it perhaps more difficult.

Some of the areas you have to look at in planning this when you get one of these cases, and I think it reflects a little bit on our budget issues because we do not choose our work, our work comes to us. Other people give us work. And it can be the executive branch that gives us work through the cases they bring or the legislature with new laws. And so we have to meet those demands.

I sometimes wish that we would be able to have, both from the executive and legislative branches, a judicial impact statement when they are going to do something to us to let us know how much they think it is going to cost us to handle this new work.

Mr. CRENSHAW. We call those unfunded mandates.

Judge HOGAN. That is a good term for it.

In the terrorism area, if a court draws a terrorism trial, as happened in New York, and it is the judgment of the executive branch to bring it, obviously the first thing you look at is security issues. And what will happen normally is you meet with the Marshals' office, who do a threat assessment. And they have a special team that comes in and does that. They will meet with the judge and the chief judge to determine what additional equipment may be needed for security purposes, how much additional staff will be needed, what they will have to do with the neighborhood surrounding the courthouse, blocking off roads, which has happened before, making it difficult for the people that live there, frankly, to get in and out. And other security methods. They have to look at transportation, frankly, of the individual or individuals they are bringing and how are they going to accomplish that. There was one case in my court we brought them in by helicopter for safety reasons rather than driving them through the streets. There are just various problems that the Marshal has to work with, with the prosecutor's office and the defense counsel and the court to handle that. So the Marshals have a very large role in those areas.

Another area that you do not think about very often, it will probably involve classified information. And then we get into what they call CIPA, the Classified Information Procedures Act that you have to clear this information and how it is going to be used. But that means we have to set up in the courthouse, you have to create, if you do not have one—and, again, Judge Gibbons talked about the acronyms—a SCIF, Secure Compartmentalized Information Facility. That is a locked-down facility where you keep the secret information and no one can get in there without special access, and there is no communications within that room, et cetera, so the information is protected. And that means that to set that up has to be done and you have to operate that, while you have a special information officer who handles that from the Justice Department as well.

After you go through setting that up, then you have to get your staff security clearances to be able to look at this information. And that costs money and time as well. And then the final component really is, if you get towards a trial, the jury. And you are going to have to summon a large number of potential jurors to come down because difficulties in getting them to serve and knowledge they may have about the case or preconceptions. So you have to go through hundreds of jurors to select the trial, and that is expensive and time consuming as well.

The bottom line, I think, is that we have conducted terrorism trials of a high-profile nature, high-visibility nature, of a high-threat nature. They have been done successfully. But they are very expensive and time consuming. And with the sequestration, for instance, I am concerned if an individual is brought in on the Federal defenders and the monies that are available for them to be able to represent the defendant and what they can afford to do. It will be a challenge for high-threat trials in the future at this budget level, frankly.

Mr. CRENSHAW. Well, thank you very much.

Mr. Serrano.

COURT STAFFING LOSSES

Mr. SERRANO. Thank you so much, Mr. Chairman. Before I ask the question, I just want to comment on this whole thing of where to hold the 9/11 terrorist trials. That became such an emotional and a very serious issue in New York City. And at that time—and still today—I was the only member of the New York City delegation, perhaps the New York State delegation, who was in favor of having the trials in New York. I said this was the scene of the crime, if you will. We have nothing to hide. We shouldn't fear anymore, you know. So I thought it was part of the healing process to say we can do it here.

Interestingly enough, at the end of the day, Mr. Chairman, the reason given by city officials in consultation with Federal officials for not holding it was the impact it would have on local businesses with traffic and so on, which kind of struck me as an interesting reason not to hold a trial there.

Let me ask one last question. Judge Gibbons, your testimony discusses the loss of 1,800 staff over the last 18 months due to budget pressure. And this is before the sequester. Can you please provide a breakout of how these staff losses have impacted each program within the judiciary? Have these staffing losses been through attrition or have you had to let staff go?

And another part of another question is, in your testimony, you decided not to request funding to replace the 1,800 employees that were lost over the last 18 months as a result of the budget. That was not easy, but how did you come to that conclusion? So how did you, first, let go of the 1,800, and then why did you decide not to ask to replace them?

Judge GIBBONS. The vast majority of the losses were due to normal attrition. We did offer buyouts, voluntary separation incentive payments and early retirement in order to minimize forced downsizing. Had we not taken those two steps, the losses would not, in fact, have been mostly due to normal attrition.

The result of that, of course, is that each of the judiciary entities and units affected by the staffing loss—district courts, bankruptcy courts, probation, pretrial services offices, appellate courts—they are all operating at levels that are somewhat difficult. And, so, yes, it was hard to make the decision about the budget request with which we came forward. We have always tried to represent what the needs of the judiciary are. We have also tried to draw a line between the ebbs and flows of the appropriations process, of which the 1,800-plus was on the extreme end of down, and something like sequestration, which is not related to what our needs are and is simply an indiscriminate way of attempting to reduce the deficit.

And so we tried hard to be constructive, realistic in our work with the subcommittee but also represent the judiciary the best we could. And that seemed to us to be, at the end of the day, the best way to come forward with our request. We do not tell you that the loss of staff up to this point has been easy.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following information:]

Overall, 1,885 positions in clerks of court and probation and pretrial services offices were lost over the last 18 months, a 9% decline. Bankruptcy courts saw the largest reduction in overall staffing, measured in both total FTE (735) and as a percentage of their on-board staff level (-16%). Our probation and pretrial services offices and district clerks of court offices each lost about 480 FTE over this time period. The fewest staffing losses in numbers were in the appellate courts which lost about 200 FTE. The vast majority of the staffing losses were due to normal attrition, but we did offer voluntary separation incentive payments (buyouts) and early retirement to minimize forced downsizing.

The table below details the staffing losses associated with each program from July 2011 through February 2013.

Court Staffing Losses By Court Program
July 2011 – February 2013
FTE

Program	Jul-11	Feb-13	Change	% Change
Bankruptcy	4,654	3,919	(735)	-16%
Probation/Pretrial	8,491	8,013	(478)	-6%
District	7,081	6,604	(477)	-7%
Appellate	1,909	1,714	(195)	-10%
Total	22,135	20,250	(1,885)	-9%

Mr. SERRANO. Well, I thank you, we thank you for your testimony today, for your service.

Are you a lawyer, Mr. Chairman?

Mr. CRENSHAW. I used to be.

Mr. SERRANO. Okay, I am not a lawyer, so a lot of——

Mr. CRENSHAW. It is hard to stop being a lawyer.

Mr. SERRANO. You are a lawmaker now.

Mr. CRENSHAW. Yes, I am a lawmaker now.

Mr. SERRANO. So a lot of this is fascinating to me, how the courts work, and throughout the years I have tried to learn more and more about it. I am not a lawyer, although I did play a judge on "Law and Order" once, and I do not know if that qualifies me. Season five, by the way, if you are interested. The name of the episode is "The Guardian."

Interestingly enough, I have no idea what it is like to be a judge. But I tell you, the hardest part of playing a judge on TV was I tripped over the robe so many times. It was pretty embarrassing on the set. So they just shortened it, and I was fine after that.

Judge GIBBONS. Well, I will not share with you my most embarrassing moment as a judicial officer. I would share it with you privately, but I am not going to put it on the record in this hearing.

Mr. SERRANO. Well, I thank you for your service. Thank you so much.

Mr. CRENSHAW. Well, the committee thanks you, too, for being here today. And we thank you for the work that you do, and the fact that you are trying to do it more efficiently and more effectively is very important. So thank you very much.

Judge GIBBONS. Thank you very much for the opportunity to be here and to work with the subcommittee. We appreciate it.

Mr. CRENSHAW. The hearing is adjourned.

Financial Services and General Government Subcommittee Hearing on The Judiciary

Questions for the Record Submitted by Chairman Ander Crenshaw

Federal Circuit and International Trade Courts

Question. Judge Gibbons, the Judiciary requests and the Committee appropriates funds for the Court of Appeals for the Federal Circuit and the Court of International Trade in separate appropriations from the regional appellate and district courts. The funding for the Federal Circuit and International Trade courts also are not overseen by United States Judicial Conference.

Would there be a benefit to the United States Judicial Conference overseeing their budgets and operations, and ensuring their operations are following appropriate policies for security, facilities, staffing, and information technology?

Response:

Although the Judicial Conference does not specifically approve the budget requests for the Court of Appeals for the Federal Circuit (CAFC) and the Court of International Trade (CIT), it does, in fact, oversee these courts (collectively, the "national courts") in the same way that it oversees the operations of any other Article III court. It is worth noting that the chief judges of the CAFC and CIT are members of the Judicial Conference. The Judicial Conference performs its oversight function by setting policies for the "courts," including the national courts, each of which is, of course, defined as a court. 28 U.S.C. §§ 331 and 610 (stating that courts include the CIT and circuit courts, which include the CAFC, 28 USC § 41). Therefore, the national courts are bound by Judicial Conference policies. In fact, the process of good governance in the judiciary has recognized this very point. Most recently, in 2006, the Budget Committee of the Judicial Conference took up the issue and found:

> *The Committee discussed the possibility that, because of their separate appropriations, the [CIT and CAFC] may claim independence from Judicial Conference policies on a range of issues, especially dealing with recent cost-containment initiatives in the areas of personnel and rent.... During preparations for the meeting, Chief Judges Paul R. Michel of the Court of Appeals for the Federal Circuit and Jane A. Restani of the Court of International Trade both indicated that their courts follow all Judicial Conference policies and procedures in these areas. The Budget Committee is pleased that both courts are willing to comply with existing Judicial Conference policies and are committed to the judiciary's cost-containment strategy.*

March 2006 - Summary of the Report of the Judicial Conference Committee on the Budget.

In all of the policy areas raised by this question – budget, security, facilities, staffing, and information technology – the national courts are bound by Judicial Conference policies. For example, the Judicial Conference in 2011 set a policy that prohibited step increases for employees; each of the national courts followed this policy. In addition, the national courts work closely with the Administrative Office staff in developing budget requests although independent budget authority enables the CAFC and CIT to set their own funding levels in a request. The fiscal year 2014 budget requests from both courts follow the guidelines established by the Budget Committee of the Judicial Conference. Indeed, the CIT performs its budget responsibilities so well that it recently received a commendation from the Senate for being an excellent steward of public funds. Senate Report 112-79, September 15, 2011, Page 48.

What is the benefit of separating the funding for these court units from the rest of the Judiciary?

Response:

The national courts' independent budget authority serves their unique missions. As national courts, the Court of Appeals for the Federal Circuit (CAFC) and the Court of International Trade (CIT) have distinct roles in our judicial system. The mission of each court is directly rooted in Section 8 of the First Article of the Constitution, the former in the "useful Arts" provision ("The Congress shall have Power....To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries") and the latter in the "uniformity clause" ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States. . ."). These special responsibilities have a direct effect on the economic life of the nation, both by securing the uniform application of intellectual property and trade laws to harness the benefits of our free economic system, and by protecting the nation's ability to maintain our international competitiveness in the global economy.

From these Constitutional economic roots, the national courts' unique and important responsibilities – which differ from those of the diversified regional courts – are concentrated in the areas of the national courts' distinct jurisdiction, each of which involves the changing demands and conditions of economic innovation and trade. Congress' latest reform of the patent system, America Invents Act, Pub. L. No 112-29, 125 Stat. 284 (2011), and its recent legislation providing for the application of countervailing duties in non-market economies, Pub. L. No: 112-99, 126 Stat. 265 (2012), are examples of this changing landscape. The national courts' independent budget authority has been essential to maintaining their ability to respond to these changing demands and conditions. For example, the CIT uses the authority to develop its own rules of procedure, 28 U.S.C. § 2633(b), to create mechanisms for efficiently managing large dockets in non-traditional ways that allow for speedy justice in complex international trade litigation. It is in service to this flexibility – necessary to permit the national courts to respond to the changes they face – that Congress has long recognized their independent budget authority.[1] If

[1] The national courts' independent budget authority has been repeatedly examined by Congress and found sound. Recognizing the CIT's existing separate budget at that time, Congress maintained the CIT's separate status in 1939

the national courts were required to operate within a formula-driven approach, like the regional courts, they would lose the ability to respond in a cost-efficient way to the changing landscape they face.

Budgetary independence is important to the efficient fulfillment of the national courts' mission and the Judicial Conference would derive little benefit from removing that independent budget authority. If the national courts' budgets were folded into the larger judiciary budget, the national courts would submit their budget requests to the Judicial Conference through the Administrative Office, and the Administrative Office would have to create unique formulas for the staffing and operating costs of the national courts in order to determine the courts' resource needs.

Because the national courts derive great benefit from the flexibility provided by their independent budget authority, the Judicial Conference has consistently taken the position that the national courts should maintain their independent budget authority. In 2006, the Judicial Conference concluded "that it is unnecessary at this time to consider any change in the appropriation process for [the CIT and the CAFC]". March 2006 - Summary of the Report of the Judicial Conference Committee on the Budget. The Budget Committee also addressed this issue in 1990. At that time, the Committee likewise did not recommend merging the CIT's budget into that of the judiciary as a whole. September 1990 - Summary of the Report of the Judicial Conference Committee on the Budget.

In sum, there is extensive documented history, ample justification, and strong logical rationale to explain why the Judiciary requests, and Congress appropriates, funds for the Court of Appeals for the Federal Circuit and the Court of International Trade in separate appropriations from the regional appellate and district courts. This arrangement serves the public interest in the effective and efficient functioning of these courts.

Lastly, there is no real advantage to be gained by United States Judicial Conference oversight of the budgets and operations of these two courts. The CAFC and CIT are bound by Judicial Conference policies for security, facilities, staffing, and information technology. As noted in the response to the previous question, the Budget Committee of the United States Judicial Conference in 2006 stated that it "is pleased that both courts are willing to comply with existing Judicial Conference policies and are committed to the judiciary's cost-containment strategy."

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when it first gave the judiciary control of its own administrative functions, including the budget. See The Administrative Office Act of 1939, Pub. L. 76-299, 53 Stat. 1223. Congress also revisited whether courts of national jurisdiction should maintain their separate budget status in its deliberations over the Federal Courts Improvement Act of 1982, and again affirmed its desire to maintain this separate budget status. Pub. L. No. 97-164, 96 Stat. 25. Most recently, Congress reexamined this question with the Federal Courts Administration Act of 1992, Pub. L. 102-572, 106 Stat. 4506. As introduced, the bill would have merged the budget of the CAFC and CIT with the rest of the judiciary. But, the law, as adopted, did not contain the merger provision.

Public Access to Court Electronic Records

Judge Hogan, Congress has been supportive of the Judiciary's electronic public access program known as PACER – Public Access to Court Electronic Records. There are some critics of PACER that say court documents should be available for free to the public.

Question: What is the Judiciary's response to this criticism?

Response:

There is a high cost to providing electronic public access, and Congress decided in 1991 that the funds needed to improve electronic access to court information were to be provided by the users of this information through reasonable fees rather than by all taxpayers through appropriated funds.

Fee revenue also allows the Judiciary to pursue new technologies for providing public access, develop prototype programs to test the feasibility of new public access technologies, and develop enhancements to existing systems. By authorizing the fee, Congress has provided the Judiciary with revenue that is dedicated solely to promoting and enhancing public access.

Both taxpayers and users are very well served by the electronic public access program, including the PACER service. Taxpayers bear none of the expenses associated with the program, and users enjoy rapid access to a vast amount of court information and case documents.

Without a fee, appropriated funds from Congress would be needed for the Judiciary to continue to provide its electronic public access service. It is important to emphasize the seriousness with which the Judiciary manages its electronic public access program to ensure that court and case information, including documents, are readily available to all members of the public, regardless of their ability to pay fees. For example:

- The Judiciary does not charge for access to judicial opinions through PACER. Moreover, at its September 2012 session, the Judicial Conference approved national implementation of the program to provide access to court opinions via the Government Printing Office's (GPO) Federal Digital System (FDsys) and agreed to encourage all courts, at the discretion of the chief judge, to participate in the program. Twenty-nine pilot courts are live, with over 600,000 individual court opinions available on FDSys. The GPO reports that federal court opinions are one of the most utilized collections on FDsys, which includes the Federal Register and Congressional bills and reports. This program has proved to be extremely popular with the public, and is available free of charge via the Internet at www.gpo.gov. Registration is not required.

- Every courthouse has public access terminals in the clerk's office to provide access to PACER and other services, such as credit counseling. The $0.10 per page fee is not charged for viewing case information or documents on PACER at the public access terminals in the courthouses.

- The Judicial Conference has a fee exemption and waiver policy in place. As a result, approximately 20 percent of all PACER usage is performed by users who are exempt from any charge – including indigents, case trustees, academic researchers, CJA attorneys, and *pro bono* attorneys. In addition, if an individual account does not reach $15 quarterly, no fee is charged at all. In a given fiscal year, approximately 75 percent of active PACER users have some or all of their charges waived. In fiscal year 2012, 77 percent of users had a fee waiver for at least one quarter, and 55 percent paid no fees. The vast majority of users (94 percent) incurred less than $500 in fees or no fees at all. This is a long established pattern. The majority of fee revenue comes from a handful of users, with less than 1 percent of users generating more than 69 percent of revenue.

- Parties to a court case receive a copy of filings in the case at no charge.

- In addition to PACER access, which allows users to "pull" information from the courts, approximately 50 district courts and 80 bankruptcy courts are using a common, free internet tool, RSS, to "push" notification of docket activity to users who subscribe to their RSS feeds, much like a Congressional committee might notify its RSS subscribers of press releases, hearings, or markups.

The Judiciary is already undergoing a serious downsizing of court staff due to limited appropriated funding. If fee revenue were to continue but be reduced, some combination of the following would occur:

- Case management and public access services and systems would be frozen, with minimal updates and modifications. Presently, PACER and CM/ECF do not compete with other programs for appropriated funding. Without adequate funding that would no longer be the case, and other Judiciary operations would have to be reduced further, when courts are already downsizing, to redirect funds to keep PACER operating. Fee revenue now makes it possible to implement PACER user requirements; such implementation would be postponed or cancelled altogether. The development and deployment of the Next Generation of CM/ECF, with its critical new functionality, would be substantially, and possibly indefinitely, delayed.

- The costs associated with electronic public access would increase. The fee, even a nominal fee, and the fee waiver provide a user with a tangible, financial incentive to use the service judiciously and efficiently, and the service can be abused in the absence of a fee. Increases in usage necessitate the augmentation and re-engineering of the infrastructure, thus raising the cost of providing the service.

- User support would be diminished as the PACER Service Center would be substantially reduced or eliminated. Each court would be responsible for its external PACER users, including approximately 15,000 user calls and 4,000 e-mail requests for support each month, which likely could not be supported at a time when courts are having to downsize staff.

- There would be no registration or tracking of users. This would have serious security and performance implications for CM/ECF. Moreover, it could hinder law enforcement investigations as the PACER Service Center provides responses to grand jury subpoenas for PACER access information each year.

- The infrastructure costs for high speed data lines would need to be absorbed, or the commitment levels for bandwidth would need to be lowered, resulting in slower access speeds or the elimination of script-based queries by high volume users.

- Cyclical replacement of hardware associated with public access services, systems and CM/ECF would need to be funded from appropriated sources or services would be degraded as funds may not be available for this purpose.

The Judiciary is proud of this success story and remains committed to providing a high level of electronic public access to court information. The Administrative Office's ongoing efforts to reach out to users directly will ensure even greater access in the future.

WITNESSES